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To: Primary Home Care / Family Care (PHC/FC) Vendor Fiscal Intermediary (VFI) Agencies

Subject: Long Term Care (LTC)
Information Letter No. 02-03
Implementation of the Vendor Fiscal Intermediary (VFI) Option

In compliance with Senate Bill 1586 of the 76th Legislature, the Department of Human Services (DHS) implemented the Vendor Fiscal Intermediary (VFI) option effective January 1, 2002. The VFI option provides consumer-directed and consumer-managed services. Primary Home Care / Family Care (PHC/FC) clients may choose the VFI option for their Personal Assistance Services (PAS services).

The attached Section 9000 of the Primary Home Care (PHC) Provider Manual incorporates the new rules and corresponding procedures that need to be followed effective January 1, 2002 in providing VFI services to PHC/FC Clients. You will also be receiving a PHC Provider Manual in the mail. Please note that as a PHC VFI agency, Sections 1000 - 2000 and Sections 6000 - 9000 of the PHC Provider manual will apply to your agency. The new Section 9000 should be added to the Primary Home Care Provider Manual until a manual revision is distributed.

In addition, attached is a revised copy of the VFI Client Training Guide. The VFI agency must use this guide to train the VFI client. Every client trained on the VFI option must be provided with a copy of the VFI Client Training Guide. The VFI Client Training Guide will become an Appendix to the PHC Provider Manual with a future revision, and should be added to the PHC Provider Manual Appendices until a manual revision is distributed.

Also attached are the following forms required in the VFI option. These new forms should be added to Community Care Provider Forms Manual until a manual revision is distributed. You will also be receiving a Community Care Provider Forms Manual in the mail.

- Form 1543, VFI Option, Service Agreement Between VFI Client and VFI Agency
- Form 1544, VFI Option, Liability Acknowledgement
- Form 1545, VFI Option, Designation of Responsible Party
- Form 1546, VFI Option, PAS Budget Workbook

- Form 1550, VFI Option, Criminal History Check and Registry Verification Authorization
- Form 1551, VFI Option, Employee Relationship to the VFI Client Acknowledgement
- Form 1552, VFI Option, Service Agreement Between VFI Client and Employee
- Form 1553, VFI Option, Occupational Exposure to Bloodborne Pathogens/Hepatitis B Acknowledgement

The VFI Policy, Client Training Guide, and all the required VFI Forms are also available on the Community Care Section's VFI Website at:

<http://www.dhs.state.tx.us/programs/communitycare/vfi/index.html>

REFERRAL PROCESS

Every new PHC/FC applicant will be offered the opportunity to participate in the VFI option. Current PHC/FC clients will be offered the opportunity to participate in the VFI option at their annual review or upon request. All PHC/FC clients must receive PAS services initially through the Agency Option prior to participating in the VFI option.

Once a client has requested the VFI Option, the DHS caseworker will verify the client's interest in the VFI option at the client's initial service monitoring. If the client is still interested in the VFI option, the caseworker will send Form 2067, Case Information, to the client's chosen VFI agency informing them of the client's choice, and giving notice that the client will be contacting the VFI agency to schedule training.

VFI AGENCY PROCEDURES

It is the responsibility of the PHC/FC VFI client to contact their chosen VFI agency to schedule training. The VFI agency has 30 calendar days from the signature date of the 2067 to train the client in the VFI option, and inform the caseworker via Form 2067 that the training has been completed. If the VFI agency is unable to complete the training within the 30 day period, they must submit Form 2067 to the caseworker within the original 30 day timeframe. The 2067 must indicate the reason the VFI agency has been unable to complete the client training. Only circumstances out of the control of the VFI agency are acceptable reasons for delay.

Once the VFI client has contacted the VFI agency to schedule training, the VFI agency must schedule training with the VFI client, in person, at a mutually agreeable time. The initial training must take place in person at the VFI client's home. If the client wishes to appoint a Designated Responsible Party (DRP), this person must also be present at the initial training. Please note that if the client changes DRP, the VFI agency is not required to train the new DRP.

The training must cover the information provided in the Client Training Guide, and required by 40 Texas Administrative Code (TAC) §41, Vendor Fiscal Intermediary Payments. A copy of the Rules are attached for your convenience. You may also access the TAC at the Secretary of State's Website at:

[http://info.sos.state.tx.us/pub/plsql/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pub/plsql/readtac$ext.viewtac)

Once the VFI client has been trained by the VFI agency, the VFI agency takes on the role of Fiscal Agent for the VFI client. By choosing the VFI option, a PHC/FC client will be responsible for all personal assistance services provided under the VFI option. The VFI agency is not responsible for providing any personal assistant services (including back-up services) if the client has chosen to receive his services under the VFI option. A client participating in the VFI option may contract with a DHS contracted PHC/FC agency to provide back-up services. The PHC/FC agency is not required to enter into a contract with a VFI client to provide back-up services.

With the passage of House Bill (HB) 456, VFI client may choose to supervise the attendant performing certain skilled nursing tasks. Please note that because PHC/FC does not provide skilled nursing services, HB456 does not apply to the PHC/FC program.

All clients eligible under the provisions of the Social Security Act, §1929(b) (1929(b) clients), must have assessments conducted by a Registered Nurse (RN) for their ongoing and annual reviews. Under the VFI option, the VFI agency selected does not provide any direct services, and will not perform the required assessments for 1929(b) clients. 1929(b) clients who choose the VFI option will be required to select a contracted PHC/FC provider agency to conduct their assessments, in addition to selecting a VFI agency.

The PHC/FC provider agency chosen by the 1929(b) VFI client will be paid by the VFI agency on behalf of the client for conducting the assessment(s). The PHC/FC provider agency will be paid for one unit of nursing provided by an RN for each assessment conducted. The approved rate for one unit of nursing provided by an RN is \$33.81. 1929(b) clients who choose the VFI option will be required to allocate payment to the PHC/FC provider agency conducting the assessment(s) in their service budget. The PHC/FC provider agency selected to complete the assessment(s) for the 1929(b) VFI client must submit an invoice to the client for reimbursement. Once the client has received the invoice, he/she will forward the invoice to the VFI agency for payment. The invoice must be paid by the VFI agency within the 30 day timeframe required for all invoices and receipts under the VFI option.

The VFI client is responsible for submitting all attendant timesheets to the VFI agency within the timeframes required by the VFI agency. As the client's fiscal agent, the VFI agency is responsible for processing payroll, and making employer tax payments on behalf of the VFI client. If the client meets the agreed upon payroll deadlines, the VFI agency must pay the client's attendants on the agreed upon payday. The VFI agency must process payroll and pay the VFI client's attendant(s) at least twice monthly.

The VFI agency is also responsible for acting as the client's agent with the Texas Workforce Commission (TWC) for State Unemployment Tax payments and claims, as well as the Texas Workers' Compensation Commission (TWCC) payments and claims.

If the VFI agency feels the client is unable or unwilling to comply with the VFI option rules, the VFI agency should submit documentation supporting this claim to the VFI client's DHS caseworker. The DHS caseworker and his supervisor will review the documentation and determine if it supports ending the client's participation in the VFI option. If the documentation supports removal from the VFI option, the client will be given the opportunity to voluntarily change prior to being changed to the agency option involuntarily. The client will be offered the opportunity to appeal the change to the agency option.

A client who leaves the VFI option for any reason (voluntary or involuntary), and wishes to return to the VFI option, is required to receive services in the agency option for a minimum of three months before being eligible to return to the VFI option.

BILLING PROCESS

Once the VFI agency has made payments on behalf of the client, a request for reimbursement may be submitted to DHS. New service codes and bill codes have been established for the VFI option in the PHC/FC Program:

Description:	Service Code:	Bill Code:	Rate:
Primary Home Care			
Primary Home Care Priority 1 - Client Services	17V	G0717	\$1.00
Primary Home Care Non-Priority - Client Services	17V	G0718	\$1.00
Primary Home Care - Administrative Portion	17V	G0719	\$1.00
Family Care			

Family Care Priority 1 - Client Services	17CV	G0745	\$1.00
Family Care Non-Priority - Client Services	17CV	G0746	\$1.00
Family Care - Administrative Portion	17CV	G0747	\$1.00
Frail Elderly 1929(b)			
Frail Elderly 1929(b) Care Priority 1 - Client Services	17DV	G0748	\$1.00
Frail Elderly 1929(b) Care Non-Priority - Client Services	17DV	G0749	\$1.00
Frail Elderly 1929(b) Care - Administrative Portion	17DV	G0750	\$1.00

The VFI agency will bill the amount owed to them as the units billed, and the unit rate as \$1.00, as indicated above. The VFI agency needs to be sure they are billing the payments in the proper category. Payments made to the client or on behalf of the client are billed and paid under the appropriate bill code for "Client Services" listed above. Please note there is a separate bill code for Priority 1 and Non-Priority Clients. The VFI agency will then multiply the amount billed to the "Client Services" bill code by the Agency Billing Percentage to determine the amount to bill DHS under the "Administrative Portion" bill code. The "Administrative Portion" is also billed as dollar amount owed for number of units, and the rate as \$1.00. The Agency Billing Percentage for each client may be found on the Form 1546, Vendor Fiscal Intermediary (VFI) Option, Personal Assistance Services (PAS) Budget Workbook, on Page 2 Item H.

MONITORING

A monitoring form for the VFI option will be developed in the near future. All contracted PHC/FC VFI agencies will be trained on the monitoring instrument prior to implementation.

Please contact your contract manager if you have any further question regarding this information.

Sincerely,

signature on file

Becky Beechinor
Assistant Deputy Commissioner
Long Term Care Services

BB:ck

Attachments

Texas Administrative Code

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 TEXAS DEPARTMENT OF HUMAN SERVICES
CHAPTER 41 VENDOR FISCAL INTERMEDIARY PAYMENTS

Rules

RULE Definitions
§41.101
RULE Generic Contractor Responsibilities under the Vendor Fiscal
§41.103 Intermediary (VFI) Model
RULE Generic Consumer Responsibilities under the Vendor Fiscal
§41.105 Intermediary Model

Texas Administrative Code

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 1 TEXAS DEPARTMENT OF HUMAN SERVICES
CHAPTER 41 VENDOR FISCAL INTERMEDIARY PAYMENTS
RULE §41.101 **Definitions**

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

- (1) Consumer--An eligible recipient of a Community Care for the Aged And Disabled (CCAD) program or a Medicaid Waiver program that provides personal assistance services. In the Vendor Fiscal Intermediary (VFI) model, the consumer or his legal guardian is the employer of and retains control over the hiring, management, and termination of an individual providing personal assistance or respite.
- (2) Personal assistant--In the VFI model, a person who is employed by the consumer to provide personal assistance through any CCAD program or Medicaid Waiver program.
- (3) Vendor Fiscal Intermediary (VFI)--A CCAD contractor who participates in the VFI model and is responsible for employer administrative related functions.
- (4) Vendor Fiscal Intermediary model--The payment option in which the consumer controls the recruitment, hiring, management, and firing of their personal assistants. A fiscal agent or VFI handles employer-related administrative functions that include payroll for the personal assistants and substitute (back-up) personal assistants and filing tax-related reports of personal assistants. The consumer is the employer of record.

Source Note: The provisions of this §41.101 adopted to be effective June 10, 2001, 26 TexReg 4217

Texas Administrative Code

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	TEXAS DEPARTMENT OF HUMAN SERVICES
CHAPTER 41	VENDOR FISCAL INTERMEDIARY PAYMENTS
RULE §41.103	Generic Contractor Responsibilities under the Vendor Fiscal Intermediary (VFI) Model

This rule applies to all Community Care for the Aged and Disabled (CCAD) and Medicaid Programs that offer the VFI model of payment, unless stated differently in program rules. Contractors for any VFI model within Texas Department of Human Services (DHS) CCAD programs must:

- (1) contract with DHS to handle payroll, prepare and file tax-related forms and reports for Workers' Compensation, state and federal unemployment, Medicare, and Federal Insurance Contributions Act (FICA), and pay for other approved related expenses;
- (2) train the consumer in VFI program requirements and any other legal requirements, such as the Occupational Safety and Health Act;
- (3) provide the consumer with information, orientation, and training, as needed, concerning fiscal and payroll responsibilities and obligations as employers of personal assistant(s) and;
- (4) act as the agent for the consumer for the purpose of:
 - (A) registering the consumer as an employer, including providing assistance to the consumer in completing forms required to obtain an employer identification number (EIN) from federal agencies, state agencies, and unemployment insurance agencies;
 - (B) taking the appropriate action to file for employer agent status with the federal and state tax authorities and successfully obtaining agent status;
 - (C) making all deposits of unemployment taxes that are withheld according to the appropriate schedule;
 - (D) assisting the consumer in acquiring workers' compensation insurance for the consumer's personal assistant who is the consumer's employee, if the consumer provides workers' compensation;
 - (E) computing and paying federal and state employment taxes, including federal withholding FICA (employer and employee shares), local taxes (optional), unemployment compensation taxes, workers' compensation insurance (if applicable), and other payments required as appropriate, within specified timeframes;
 - (F) preparing and filing income tax forms and reports within specified timeframes;
 - (G) maintaining original and file copies of all forms needed to comply with federal, state, and local tax payment of unemployment compensation premiums, and all other reporting requirements of employers;
 - (H) remitting the required forms to the appropriate state agency and maintaining copies of the forms in the consumer's file upon receipt of the required completed forms from the consumer. The VFI must return copies of all forms to the consumer for the consumer's permanent personnel records;
 - (I) receiving and processing personal assistant care timesheets, processing the payroll for the consumer's personal assistant(s) upon receipt of the approved timesheets, preparing the payroll for the consumer's personal assistant(s), performing appropriate income tax, FICA, workers' compensation (if applicable), and other withholding according to federal and state regulations;
 - (J) preparing payroll for the consumer's personal assistant(s) according to approved time sheets after making appropriate deductions;
 - (K) distributing payroll checks to the consumer's personal assistant(s) according to the VFI's check distribution policy. Distribution must be at least twice a month;
 - (L) providing, at the consumer's request, the consumer with regular summaries of payroll and deductions made on the consumer's behalf; and

(M) answering questions and distributing information to concerned parties pertaining to the VFI's responsibilities.

(5) at the request of the consumer, conduct checks of criminal conviction of personal assistants directly from the Texas Department of Public Safety (DPS) Conviction Data base website and provide the history of convictions to the consumer. If the consumer prefers to request the check from DPS, or to require the personal assistant to obtain the information from DPS, this task does not need to be performed by the VFI. The consumer cannot employ the personal assistant until after the criminal history check is obtained.

(A) The VFI must also document that the consumer was informed of the criminal history results or that the consumer chose to obtain the criminal history information themselves or through the personal assistant rather than through the VFI. If there is a criminal record that prevents employment according to state law, the participant cannot hire the prospective personal assistant.

(B) If there is a criminal history result that does not prevent employment by Chapter 250 of the Health and Safety Code, the VFI must document that the consumer was informed of the result. In this case, the VFI must document that the consumer was informed of the criminal history results and that the consumer prefers to hire an employee with a criminal history (when this is not prevented by Chapter 250 of the Health and Safety Code);

(6) keep a record of expenses paid, related to personal assistant services.

(7) based on each personal assistant's time sheets and other documentation, pay for each of the consumer's costs incurred relating to personal assistant services, such as substitute (back-up) personal assistants and health insurance, not to exceed the authorization given by the contractor. Invoice payment must be made within 30 working days of the VFI's receipt of the invoice;

(8) pay costs incurred relating to personal assistance services, such as recruitment (including advertisement, travel, or telephone calls), and provision of substitute (backup) personal assistants, not to exceed the authorization given by DHS. Payment to the consumer must be made within 30 working days of the VFI receiving the receipt from the consumer;

(9) serve as the consumer's fiscal intermediary for unexpended funds within the fiscal year;

(10) maintain record keeping of the reimbursement received, payroll disbursed, and consumer account balances;

(11) comply with all state and federal rules, laws, and regulations; and

(12) retain an amount of the unit rate for personal assistant services approved by DHS as an administrative payment.

Source Note: The provisions of this §41.103 adopted to be effective June 10, 2001, 26 TexReg 4217

Texas Administrative Code

TITLE 40	SOCIAL SERVICES AND ASSISTANCE
PART 1	TEXAS DEPARTMENT OF HUMAN SERVICES
CHAPTER 41	VENDOR FISCAL INTERMEDIARY PAYMENTS
RULE §41.105	Generic Consumer Responsibilities under the Vendor Fiscal Intermediary Model

Consumers choosing the vendor fiscal intermediary (VFI) model within any Texas Department

of Human Services (DHS) Community Care for the Aged and Disabled (CCAD) program must:

- (1) be capable of performing all employer tasks that the VFI model requires, or appoint a designated person to perform these employer tasks and participate in the training offered by the VFI as specified in §41.103(2) of this title (relating to generic contractor responsibilities under the vendor fiscal intermediary (VFI) model).
- (2) appoint the VFI as the consumer's fiscal and payroll agent;
- (3) request criminal history checks of personal assistant(s), either through the VFI, personal assistant, or directly from the Texas Department of Public Safety Conviction Data base website and consider this information in determining whether to hire the personal assistant(s) as per Chapter 250 of the Health and Safety Code. An individual cannot be hired as a personal assistant until the criminal history check is obtained;
- (4) provide substitute (backup) personal assistant(s);
- (5) resolve any employer/employee-related problems or disagreements directly with his personal assistant(s);
- (6) make payroll spending decisions pertaining to provisions of personal assistant services and wages and any personal assistant employment-related costs within the consumer's authorized individual service plan, including:
 - (A) using the approved budget to cover related personal assistant employment expenses incurred by the consumer, such as recruitment, requesting a criminal history check or an open records check (which is more in-depth than a criminal check) of a potential employee, and provision of substitute (backup) personal assistants;
 - (B) providing the personal assistant with one or more of the optional benefits selected from the following list: increased wages, paid vacation, health insurance, workers' compensation, work-related travel expenses, and bonus, holiday, overtime, and sick pay. If the consumer elects not to provide workers' compensation insurance coverage for the personal assistant, the consumer must disclose this election to the personal assistant by having the personal assistant sign a written notice that workers' compensation will not be provided;
 - (C) purchasing more hours of personal assistant services by paying a decreased rate per hour when the consumer's services are at the maximum allowed by the program as long as the total amount does not exceed the authorized service plan amount for the category of service and the hours are used for the purpose of the program; and
 - (D) purchasing other authorized services related to personal assistant services, provided the services are covered by the consumer's budget plan developed by the VFI in conjunction with the consumer. The VFI must not pay for services excluded from the service plan, non-allowable costs according to DHS rule, or for services that exceed the service plan.
- (7) not discriminate against personal assistants or applicants based on race, creed, color, national origin, sex, age, disability, or sexual orientation;
- (8) perform all other employer tasks except for employer-related administrative functions specifically assumed by the VFI;
- (9) notify the VFI of all personal assistant enrollments, substitutions, dismissals, and the reasons therefore;
- (10) specify the tasks the personal assistant is to perform for the consumer, the schedule the personal assistant will work for the consumer, the hourly rate (which must be at least the minimum wage level) the consumer will pay the personal assistant, timeframes (at least twice a month) the VFI will pay the personal assistant, and benefits the personal assistant will receive;
- (11) submit to the VFI receipts or invoices for personal assistance services related costs as specified in paragraph (6)(D) of this section. The consumer cannot receive reimbursement for those services lacking copies of receipts. The copy of the receipt or invoice must be legible, verify how purchase of an allowable service pertains to the personal assistant employment-related cost, and not be dated prior to the date the individual was certified eligible for the CCAD program or prior to the date the VFI option was chosen. Additionally, the copy of the receipt or invoice must include specifications of service purchased, date service was purchased, and the vendor's name and identifying information. The receipt must be marked paid. If the consumer

does not provide required invoices, the VFI must not make payments;

(12) accept services through a non-vendor fiscal intermediary model for three months if the consumer discontinues services through the VFI model. If services are discontinued due to consumer inability or refusal to comply with responsibilities, a VFI and DHS representative or designee must review consumer's plan for correction of previous deficiencies before re-initiation of the VFI model;

(13) assume liability. Personal assistants of consumers participating in the VFI model are considered employees of the consumer. The consumer is the employer of record and retains control over the hiring, management, and firing of an individual providing personal assistance services. Personal assistants are not employees of the VFI or DHS, and the VFI and DHS are not responsible or liable for any negligent acts or omissions by the personal assistant or the employer;

(14) assume all disability related training for the personal assistant including nature of the disability, type of care needed, steps in carrying out procedures, and safety precautions;

(15) perform annual evaluations and provide ongoing feedback regarding job performance to all personal assistants;

(16) change to the agency model on VFI's recommendation, if there is a documented, substantiated pattern of consumer's refusal or inability to comply with the responsibilities listed in paragraphs (1)-(15) of this section. With concurrence from the authorized DHS representative, this recommendation will be enacted immediately. A request for a hearing to appeal the decision may be made in accordance with program guidelines; and

(17) consumer complaints regarding actions of the VFI or the personal assistant relating to abuse, neglect, and exploitation, will be addressed to the authorized Texas Department of Protective and Regulatory Services (TDPRS) representative.

Source Note: The provisions of this §41.105 adopted to be effective June 10, 2001, 26 TexReg 4217

Vendor Fiscal Intermediary (VFI)

Client Training Guide

**PHC, CBA and MDCP Programs
Texas Department of Human Services**

January 2002

VFI Client Training Guide

Table of Contents

Introduction	4
Terminology.....	5
Overview.....	6
Differences In The Payment Options	8
Choosing The VFI Option	9
Becoming An Employer	10
Designated Responsible Party.....	10
Employer of Record	11
Employee Relationship Test	12
Worker's Compensation Liability	12
Required Notice to Attendants.....	13
Work-Related Injuries.....	13
Non-Work Related Injuries	13
Determining Employment Related Costs	14
Protecting Your Property And Personal Safety.....	16
Protecting Your Property.....	16
Personal Safety	17
Recruitment and Advertising.....	19
Contents of an Advertisement.....	20
Screening Applicants	21
The Initial Telephone Contact	21
Conducting The Interview.....	22
The Personal Interview	22
Sample Questions for a Face-To-Face Interview with an Applicant.....	24
Checking References	25
Criminal History Check	26
Utilizing the Internet to Obtain a Criminal History.....	27
Employee Relationship Test.....	29
Documentation Required For Selected Attendants	29
Service Agreement	29
Other Government Agency Forms	30
Training Your Attendants	30
Setting Your Attendants' Specific Tasks	32
Setting Your Attendants' Hours & Work Days	32
Setting Your Attendants' Pay Rate, Pay Period, & Benefits	33
Expectations, Performance Evaluations & Reasons for Dismissal.....	33
Be Prepared with Back-up Attendants	33
Reimbursement And Payroll Process	34
Attendant Payroll	34
Administrative Cost Reimbursement	34
Allowable Costs	36

Supervising Your Attendant	39
Overall Expectations for Your Attendant	39
Performance Evaluation.....	39
Conflict Resolution and Termination.....	40
Record Keeping Requirements.....	42

Introduction

This guide is designed to help individuals who choose to participate in the Vendor Fiscal Intermediary (VFI) payment option for their Personal Assistance Services (PAS) and Respite services.

The guide is designed for the following programs:

- CCAD Primary Home Care/Family Care (PHC/FC)

The VFI model for CCAD includes only PAS services.

- Community Based Alternatives (CBA)

The VFI model for CBA includes both PAS and Respite services.

- Medically Dependent Children Program (MDCP)

The MDCP program offers Adjunct Support services to assist the family in caring for a client in the client's own home. The services may include PAS services offered by a nurse, a licensed or certified aide, or an unskilled attendant.

Both PAS services provided by non-licensed personnel and In-Home Respite services provided by non-licensed personnel are included in the MDCP VFI model.

Terminology

This guide contains many documents from "Recruitment, Management and Training of Personal Assistants: A Handbook for People with Disabilities" developed by the Coalition of Texans with Disabilities and the Texas Planning Council for Developmental Disabilities.

The handbook uses the term *personal assistants*; this guide refers to *attendants*. These terms are interchangeable.

In addition, please note the following interchangeable terms:

Term used in this Guide:	Interchangeable Terms:
Client	Consumer, Participant
Provider Agency	Home Health Agency, HCSS Agency
Attendant	Personal Assistant, Personal Attendant
Caseworker	Case Manager, Social Worker

Overview

When you choose the VFI option, you are choosing to hire and manage your own Personal Assistant Services (PAS) and Respite attendants.

In the VFI option, you have control over how your allocated program service funds are spent on salary and benefits for your attendant(s).

You or your guardian, if you have one, is the employer of record in the VFI option. You will be obligated to pay employment-related taxes and do payroll for your attendants. You will choose a VFI agency to provide this service for you. Your case manager will give you a list of available contracted VFI agencies. The VFI agency will receive a set amount of money from your budget to do the employer-related payroll and taxation responsibilities for you.

No expenses may be incurred prior to completion of:

- the VFI Training Guide with your selected VFI agency, and
- the appropriate VFI Fund and Wage Calculation Forms.

Only allowable expenses incurred following the client's effective date of enrollment in the VFI option may be reimbursed. Expenses for Criminal History Checks and attendant recruitment may be incurred prior to the effective date of the VFI option and still be reimbursed.

As an employer under the VFI option, you have additional benefits, including:

- You have the benefit of controlling your allotted service funds and setting the salary and benefits or bonuses for your attendant.
- You also have the benefit of hiring your own attendants, back-ups and respite providers.

In addition to the many benefits of the option, you also have the responsibilities that come with being an employer:

- As an employer you are required to recruit, hire, manage, and if necessary, dismiss your attendants.
- You are responsible for completing all employer-related paperwork and the duties related to payroll and payroll taxes.

Under the VFI option, you will select a VFI agency to prepare your employer-related payroll and taxes. The VFI agency will complete all paperwork to set you up as an employer and help you to develop and manage your PAS and Respite services funds.

Differences In The Payment Options

The table below shows some of the differences in responsibilities between the VFI option and the traditional Agency Option.

Questions Regarding Payment Options	VFI Option	Agency Option
Who is the employer of record with responsibility for hiring and firing attendants?	Client	Provider Agency
Who is responsible for paying taxes and payroll?	VFI Agency as the agent of the Client	Provider Agency
Who determines the rate of pay, fringe benefits, bonuses, and work related travel for the attendant(s)?	Client	Provider Agency
Who recruits, trains, and manages attendants?	Client	Client and/or Provider Agency
Who must ensure that criminal history checks are documented?	Client	Provider Agency
Who is responsible for on-the-job injury and other liabilities of attendants?	Client	Provider Agency
Who is responsible for providing back-up coverage for PAS and Respite services?	Client	Provider Agency
Who is responsible for complying with DHS rules?	Client and VFI Agency	Client and Provider Agency
Who is responsible for monitoring service delivery?	Client and Caseworker	Client and Caseworker
Who is responsible for monitoring employment related costs?	Client, VFI Agency and Caseworker	Provider Agency

Choosing The VFI Option

Once you have chosen the VFI option, you must choose a VFI agency to assist you with becoming an employer. You must sign a service agreement with your chosen VFI agency. This is required of all clients who choose the VFI option.

The Service Agreement Between VFI Client and the VFI Agency, in the required format, can be found in Required Forms, Pg. 2.

The VFI agency will assist you with many of the functions of the VFI option. They will:

- assist you with paperwork,
- process your attendant's payroll,
- train you on many issues, and
- be a source of information for you.

Please note, however, that when you choose the VFI option, you are taking the responsibility to manage and provide all your PAS and Respite services (if you have chosen both options). The VFI agency will not provide any PAS or Respite services to you.

Becoming An Employer

The VFI agency will assist you with all the paperwork required to become an employer. When you become an employer, you are accepting liability for any employees hired by you or someone on your behalf. It is important that you and anyone you hire understand that, when you have chosen the VFI option, attendants hired to assist you are not employees of the VFI agency or of DHS.

➔ **This VFI Training Guide does not contain all the information you need to be an employer. You must ensure that you complete all responsibilities of being an employer. Your VFI agency must ensure that all administrative responsibilities the VFI agency fulfills for you meet the requirements of the various governmental agencies as applicable.**

Designated Responsible Party

Individuals who want someone to assist them with the responsibilities of being an employer may choose to designate a willing adult as their Designated Responsible Party in the VFI option.

The definition of a **Designated Responsible Party** is as follows:

“An individual agreeing to be designated by the VFI client to perform any of the employer functions on behalf of the VFI client. **The VFI client retains the status as employer of record.** The designated responsible party may not be paid for performance as a designated responsible party OR as the employee of the client for PAS or Respite services to avoid conflict of interest. Please note that a Designated Responsible Party may include a person appointed as Power of Attorney (POA) for you, if the POA addresses any of the responsibilities required in the VFI option.”

The decision to have a Designated Responsible Party for the VFI option is your choice. You may change your Designated Responsible Party. You may also decide not to have a Designated Responsible Party if you feel you are able to fulfill the responsibilities of an employer.

The *Designation of Responsible Party for the VFI Option* form (*Required Forms, Pg. 10*) is used to document the first Designated Responsible Party you select.

If you decide to change your Designated Responsible Party in the VFI option, use the same form to document the change and to revoke the previous assignment. Notify the VFI agency and your DHS caseworker as soon as possible each time you make a change in your Designated Responsible Party.

On the last page of the form is a place to document your decision not to utilize a Designated Responsible Party after you have had one or more Designated Responsible Parties. Should you decide later to use a Designated Responsible Party, you will need to start a new form and make the new designation an "Initial Designation."

Within 5 calendar days of the signature date on each form, you will need to provide copies of the "Initial Designation" and of each "Change in Designation" to the following:

- the Designated Responsible Party,
- the VFI agency, and
- the DHS Caseworker.

Retain the original of the form in your records.

Employer of Record

In the VFI option, someone will need to become the Employer of Record. This is the person who will officially be the employer of all attendants hired to assist you in your home. One of the following persons must be the Employer of Record:

- the client,
- the parent (natural, legal or adopted), step-parent, adopted parent of a minor client (not applicable to CBA), or
- the legal guardian of an adult or minor client.

No other persons may be the employer of record in the VFI option.

Employee Relationship Test

Under the VFI option, certain persons cannot be hired as the paid attendant. The following restrictions are **in addition** to any restrictions of the agency option in a specific program.

The following persons cannot be hired as the paid attendant:

- the spouse of the employer of record,
- neither the Designated Responsible Party nor his/her spouse,
- neither a person with POA nor his/her spouse,
- the spouse of a court-appointed guardian for a client, or
- the spouse of the VFI client.

The VFI agency will have you sign the *Employee Relationship to the VFI Client Acknowledgement Form (Required Forms, Pg. 25)* to indicate your understanding of who may not be hired as your paid attendant.

Worker's Compensation Liability

All employers are liable for injuries to employees while they are on the job.

As an employer, you have the option of obtaining Worker's Compensation Insurance. If you choose to purchase this insurance, your VFI agency will assist you in with obtaining information regarding this insurance. VFI clients who elect to provide coverage through the Texas Workers' Compensation Commission (TWCC) program may contact their local TWCC office for more information and the required documents. More information about TWCC and Texas Workers' Compensation (TWC) is available from the TWCC website at:

<http://www.twcc.state.tx.us>

Your homeowner's or renter's insurance policy may also provide some coverage for attendant injuries if they occur at your home. Discuss this with your insurance agent.

Required Notice to Attendants

If you elect not to provide some sort of Worker's Compensation coverage, you must notify all attendants in writing.

The Liability Acknowledgement (*Required Forms, Pg. 32*) must be signed and dated by the attendant at the time of hire. You should make a copy of this form for each attendant. The original signed form should be kept in your employee records.

The Notice to Employees Concerning Workers' Compensation in Texas (*Required Forms, Pg.33*) is available in English and Spanish.

Work-Related Injuries

You should require your attendants to immediately report any/all injuries received on the job to you. You may also require that the attendant document the injury (what, how, when, where, witnesses, injury, etc.) in a written report for their file. You may determine, after reviewing the attendant's report, that additional training and/or safety measures need to be taken to prevent a reoccurrence of the injury/incident.

Non-Work Related Injuries

Workers' Compensation and employer liability insurance policies provide coverage for injuries that occur "on-the-job." The employee is not provided coverage/benefits in these programs, on or off the job, if/when:

- the injury occurred while the worker was intoxicated,
- the worker injured himself or herself intentionally or while unlawfully attempting to injure someone else,
- the worker was injured by another person for personal reasons,
- the worker was injured while voluntarily participating in an off-work activity,
- the worker was injured by an act of God,
- the injury occurred during horseplay, and/or
- the injury was not sustained while at work or during work.

Determining Employment Related Costs

You will decide which allowable employment related costs you will incur as a part of the process of being an employer. The VFI agency will assist you in establishing a budget to include these costs within your approved program funds. Allowable costs may include:

Administrative Expenses*:

- Employee recruitment costs, such as advertising
- Criminal history checks of potential employees
- Hepatitis B Vaccination (if elected by employee[s])
- Nursing Assessments (PHC 1929(b) clients only)

Optional Benefits*:

- Bonus Pay
- Vacation Leave
- Sick Leave
- Employee Insurance
- Worker's Compensation or other liability insurance costs

*This is not an all-inclusive list of benefits. You can discuss other ideas you have with your VFI agency. More information regarding administrative costs may be found in the *Reimbursement and Payroll Process* section of this document.

The VFI agency is required to provide you and your caseworker with a summary of monies spent at each regularly scheduled review (your review schedule is dependent on the type of services you have). You may also request that the VFI agency give you summaries of monies spent as frequently as every month. Discuss with your VFI agency how often you want these summaries.

The number of PAS hours or days of Respite services authorized by your caseworker determines the amount of money you have to spend for your PAS or Respite services.

The total amount of administrative costs you can spend is directly tied to the authorized amount of services.

- The ceiling on administrative costs is set as a percentage of the DHS authorized unit rate for that service. Administrative costs cannot exceed that amount. You can, however, opt to spend some of your allowable administrative monies on a higher hourly rate for your attendant or other allowable other benefits for your attendant.

- Please note, however, if you opt to spend some of the administrative portion on additional PAS services the maximum for administrative costs is still based on the DHS authorized hours.
- This also needs to be taken into account when you are considering changing from the VFI option prior to the end of your VFI service plan year. You need to ensure enough administrative funds, based on the DHS authorized hours provided during the time you were using the VFI option, are available to cover all administrative costs incurred prior to changing from the VFI option.

There is a set of worksheets designed to assist you in determining the appropriate administrative costs and rate of pay for services. These forms must be completed and on file for each service authorized and chosen under the VFI option.

Worksheets may be found in *Required Forms* for each of the services available under the VFI option – PAS (*Pg. 13*), In-Home Respite (*Pg. 17*) and Out-of-Home Respite (*Pg. 21*).

The worksheets are also available as automated worksheets on the VFI website:

<http://www.dhs.state.tx.us/programs/communitycare/forms/VFIforms.html>

The downloadable worksheets are in Excel format. These automated versions will calculate all the required information automatically from a few entries.

Protecting Your Property And Personal Safety

Protecting Your Property

Here are some tips on protecting your property and on personal safety:

- Make an inventory.

List valuable items, the date of purchase and the original price. Save receipts and serial numbers if possible. Better yet, take photographs or make a video recording of your valuables. Give a copy of your inventory to your insurance agent, family member or friend and/or put another copy in a safe or safe deposit box. If you have a loss, it will help establish proof of value for filing an insurance claim.

Keep an inventory of your consumables (food, supplies, etc.) also. Keeping close tabs on your consumables can help to control purchasing.

- Mark valuable items.

Marking things a thief would be likely to steal, like the TV and stereo, will help police trace them and return them to you if they are recovered. Use an engraving pen. Many times they're available for loan from your police station. Ask the police which numbers to use. Usually your driver's license number with state abbreviation or your social security number is recommended.

- Everything should have a place known to you and should be kept in that place. Make it evident that you are aware of your surroundings, your possessions, and where those items belong through casual conversation.
- Consider purchasing a homeowner's or rental insurance policy to help you recover some of your property in case of fire, flood, theft or other loss.
- When you must terminate a personal assistant, check your telephone bill and make sure there are no phone calls charged to your number by an ex-employee.
- Check credit card bills for charges you did not make. If you allowed your assistant to withdraw money with your ATM, change your PIN number.

- Be sure to get your keys from your assistant when you are terminating. Change your locks if the assistant does not return your keys.

Personal Safety

- You have the right to receive personal assistance without being taken advantage of sexually or financially, and to terminate exploitive or abusive relationships. If you feel that a behavior an assistant is displaying toward you is inappropriate, talk to someone you can trust about the situation. It can help to get a second opinion of the situation and how to handle it.
- Remember that criminals (including rapists and burglars) often enter through unlocked doors or windows. Keep your doors locked - especially at night. If it is a friend at the door, he or she won't mind waiting on you to open the door. You may want to ask friends and family members to call before coming over so you are expecting them.
- If you suspect someone is trying to get into your home, call 911. Even if you are not sure, it is best to call. If it is an assistant or someone else you know, but they are acting suspiciously, call the police.
- Most sexual abuse happens with someone known to the person. Remember you have the right to say no to any unwanted touch, whether it is a personal assistant, a romantic partner, friend, or family member.
- If you receive an unwanted sexual touch from a personal assistant, be aware that it is a violation of professional ethics, your rights and the law. Report it as soon as you can to the police. For support, call your local rape crisis center and/or a personal counselor.
- Trust your gut feeling. If you feel unsafe, terminate the relationship with your personal assistant.
- Have friends and family you trust handle things that you do not feel comfortable delegating to your assistant (i.e. assistance with financial matters). Let your assistant know that your friends and family are watching out for your well-being. Let neighbors you trust know your schedule and ask them to keep an eye on your home. You may also want to ask friends and family members to call or drop by to visit while a new assistant is in your home.

- In cases of abuse that involve a worker employed by a home health agency, report the situation to the Texas Department of Human Services, Home Health Licensing at 1-800-228-1570. If you are experiencing abuse by someone who is not a home health agency employee, call Texas Adult Protective Services to file a report at 1-800-252-5400. Always call 911 in an emergency and for immediate assistance.

Excerpt from Recruiting, Managing, and Training of Personal Assistants: A Handbook for People with Disabilities by the Coalition of Texans with Disabilities and the Texas Planning Council for Developmental Disabilities

You will need to have a list of emergency and other contact persons and their phone numbers readily available. You will also need to provide a copy of this list to the VFI agency.

There is a form titled *Emergency and Other Contact Information* in *Sample Forms, Pg. 5*, which you may use if you wish.

Recruitment and Advertising

There are many methods of advertising and recruitment that a person can utilize when looking for a good, dependable personal assistant. Do not discount any possibility. Below are some suggestions for finding prospective employees:

- Newspaper Advertisements

Classified ads in newspapers are an efficient method to reach a large audience. Neighborhood newspapers are cheaper than major citywide newspapers, and are good to target potential assistants who live closer to your home.

- Local Newsletters

Sometimes disability and other community organizations and churches will run short ads in their newsletters.

- Colleges and Universities

Colleges can be an excellent source for finding personal assistants. Many students are looking for extra income to help them through college. It is often possible to find students who are interested in a live-in arrangement. Students that have majors in the area of health and human services are often looking for work experience. To advertise a position, contact the career placement office, student housing office, or a Texas Rehabilitation Commission office on campus. You might also try health related education departments such as physical therapy, occupational therapy and nursing.

- Word of Mouth

Don't forget to ask family, friends and neighbors if they, or if they know of anyone who would make a good assistant for you. Let them know what qualifications you are looking for, and ask them to tell others about the position, too.

- Local Agencies

Social service organizations like independent living centers often keep a registry or list of assistants who may have received some basic training or have work experience.

- Bulletin Boards in High Traffic Areas

Hang flyers on bulletin boards in high traffic areas, such as: grocery stores, banks, apartment buildings, restaurants, community centers, churches and laundromats.

- Local Employment Offices/Rehabilitation Agencies

One source often overlooked is the state employment commission (Texas Workforce Commission), or rehabilitation agencies. (Texas Rehabilitation Commission) Some universities have TRC offices on campus.

Excerpt from Recruiting, Managing, and Training of Personal Assistants: A Handbook for People with Disabilities by the Coalition of Texans with Disabilities and the Texas Planning Council for Developmental Disabilities

Contents of an Advertisement

The more complete the information in your advertisement, the more you can be sure that prospects who contact you are truly interested and potentially qualified for the job. It is a good idea to include:

- Your name,
- Job title and a short description of the job, and
- Phone number

You can also include this optional, but helpful, information:

- Hours (Is the job hourly or live-in?)
- Qualifications required
- Compensation and benefits offered
- Location (i.e. Southwest Houston)

Here are some samples of advertisements that you could use as a guide:

Personal Assistant - Needed to assist male with quadriplegia with personal care, shopping, light housekeeping. Part-time, 4 days/week. Flexible schedule available. Driver's license preferred. This is an ideal position for a college student. Prime location near Rice University, \$5.90/hr. Call Tom at (212) 111-1111 evenings.

Personal Assistant - Female, nonsmoker, needed to live-in with person with disabilities to assist with personal care, housekeeping. Free rent, hours and days negotiable, salary included. At least 6 months prior experience preferred. Call (555) 555-1212 to leave a message.

Excerpt from *Recruiting, Managing, and Training of Personal Assistants: A Handbook for People with Disabilities* by the Coalition of Texans with Disabilities and the Texas Planning Council for Developmental Disabilities

Screening Applicants

The Initial Telephone Contact

- Give a brief description of the duties of the position, amount of hours the job requires, and the amount and method of pay.
- If the job includes bowel/bladder care, and if there are times when you will not be wearing clothes, be sure to tell the applicant.
- If the applicant is interested, ask the applicable questions, and record answers:
 - Will you give me your name, phone where you can be reached, and address?
 - What days/hours are you available to work? Do you have any restraints on your schedule that I need to consider? Are there days you definitely cannot work?
 - Have you ever assisted or worked for a disabled person before? (If yes) Tell me a little about the kinds of tasks you performed.
 - Do you have reliable transportation?
 - Are you at least 18 years of age and do you have a valid Social Security number?
 - Do you smoke?

- Are you allergic to pets? (If you have a pet in your home.)
 - Are there tasks you object to performing (i.e. bathing, toileting, and dressing?)
 - Do you have any experience in lifting, transferring, and positioning?
 - Can you cook and would you mind doing housework?
- Tell the person you will call back to make an appointment for an interview (if you are interested in a face-to-face interview). Ask them to bring a Texas Identification Card or Driver's License and proof of address when they come for an interview. You may consider meeting at a "neutral" location outside of your home for personal safety purposes.
 - Even if the person is unsuitable for the job, always thank them for their interest. You may want to file their name and phone number to use in the future.

Excerpt from *Recruiting, Managing, and Training of Personal Assistants: A Handbook for People with Disabilities* by the Coalition of Texans with Disabilities and the Texas Planning Council for Developmental Disabilities

Conducting The Interview

The Personal Interview

Call those applicants that appeared to be good prospects and schedule each for a face-to-face interview. Allow plenty of time between each interview. About one hour for each interview is usually good. The interview is important because this is the time when you let the applicant know about the job in detail and gather information about the person that you may hire as an assistant.

When the prospective attendant arrives there are a few suggestions that can make the interview successful. Some things may need to be repeated from the telephone contact for clarification purposes:

- Help the person feel as comfortable as possible and get to know each other a little.
- Tell the person about your disability.

- Ask the applicant to fill out an application.

Applications are useful because they are a good way to keep up with the prospective assistants that you have interviewed. They also simplify record keeping and are an easy way to have quick access to the information you will need to make a final decision. It will give you good information to ask questions about during the interview as well as provide a good resource for back-up or substitute assistants if your regular assistant is unable to get to work. A sample application that can be modified to fit your personal needs can be found in *Sample Forms, Pg. 2*.

- Give him/her a copy of your job description to read and explain the duties and responsibilities of the job thoroughly. Ask if he/she can safely perform the functions of the job. (i.e. lifting, transferring, etc.)
- Ask them to tell you about him/herself. Be sure to ask questions about past work history, reasons for leaving other employment, any past experience with personal assistance and why they are interested in this position. Ask if you may contact former employers for a job reference. Ask about their career goals and why they are pursuing this type of work.
- Describe the work schedule, pay method, any benefits and leave plan, and your method of evaluating an assistant.
- Give the applicant an opportunity to ask questions.
- Tell the applicant you will call as soon as you make a decision. (Be sure to contact the applicant even if you decide not to hire him/her). Thank them for their interest and time.

Excerpt from *Recruiting, Managing, and Training of Personal Assistants: A Handbook for People with Disabilities* by the Coalition of Texans with Disabilities and the Texas Planning Council for Developmental Disabilities

Sample Questions for a Face-To-Face Interview with an Applicant

The following are a few sample questions you can ask during the personal interview to help choose your assistant:

- How far do you live from here? (Turnover tends to be higher among workers who commute long distances.)
- Have you had any experience giving personal care?
- Do you smoke or drink?
- Do you object if other people smoke or drink when you are present?
- Tell me how you approach multiple tasks to ensure that all are performed.
- Are you comfortable performing personal care duties such as bathing and toileting?
- What do you think will be the best and worst part of this job? What did you like best and least about your last job?
- What are your best and worst qualities?
- Why are you interested in being a personal assistant?
- Give me an example of how you have handled disagreements with your past employers.
- Describe a hypothetical "scenario" and ask what the applicant would do in that situation.

Checking References

Before you decide which applicant(s) you want to hire as an assistant, check each person's references:

- Call former employers listed on the application. Look carefully at how long the applicant was employed at each place. (According to Americare, Inc., if the applicant has held three or more jobs in the last five years, it is a sign he/she may not last.)
- Ask former employers if the applicant worked there and the dates worked; does their response match the applicant's response?
- You can ask the following, but the previous employer is not legally required to provide you the information: "Is the person reliable, did they arrive on time for work, did they do satisfactory work, were there any problems and would you hire him/her again?"
- Check personal references, also.

Excerpt from *Recruiting, Managing, and Training of Personal Assistants: A Handbook for People with Disabilities* by the Coalition of Texans with Disabilities and the Texas Planning Council for Developmental Disabilities

Criminal History Check

Clients who have chosen the VFI option must perform a Criminal History Check on all applicants or request the VFI agency perform one for them. This provides some degree of assurance that the persons you are hire do not have a criminal history that would prevent them from working in a home care setting in Texas.

Each person must have a criminal history check before you can offer him/her or her a job and before they perform any work for you. Be sure you have a signed *Criminal History Check Authorization Form* for each applicant on file. T

The Criminal History Check Authorization Form can be found in Required Forms, Pg. 24.

There are a number of ways to procure a criminal history check:

- You can access the Department of Public Safety (DPS) Conviction Data base web site independently or have a trusted friend or relative do it for you.

You must be prepared to use a credit card to pay the fee (approximately \$3.15). This fee is an allowable expense that can be reimbursed in the VFI option when you present a paid receipt to the VFI agency.

- You can request that the VFI agency access the DPS database for you.

The fee remains the same, and can be reimbursed to the VFI agency from your budget.

- You can request applicants to provide you with a copy of their current Criminal History that they obtain themselves from DPS.

Some crimes prevent employment as an attendant, a provider of respite services or a paid home care worker under Chapter 250 of the Health and Safety Code. If there is a criminal history, this should be discussed with the VFI.

Utilizing the Internet to Obtain a Criminal History

- Be prepared with the full name date of birth, gender and race of the employee.
- Obtain access to a computer. If you do not own a computer with Internet access, you may:
 - Use a computer owned by a family member or a friend.
 - Have a family member or a friend access the record.
 - Access a computer from the nearest public library branch.
- Enter the following into the address line of the computer Internet browser:

<http://www.txdps>
- Click on *Online Services*
- Choose *Conviction Records*
- Follow the onscreen directions to create a new account
- Follow the onscreen directions to buy credits (each credit is approximately \$3.25)
- Follow the onscreen directions to search for a criminal history.
- Print the criminal history for your permanent record.

The next page provides a list of convictions barring employment in a home care setting.

Chapter 250 of the Health and Safety Code mandates that long-term care facilities and home health agencies licensed or regulated by the Texas Department of Human Services (DHS) must obtain a criminal history record on new unlicensed employees who provide direct care via a regulatory agency, private agency or the Department of Public Safety (DPS). This statute applies to:

- nursing facilities;
- personal care facilities (Assisted Living);
- home health agencies (HCSSA's); and/or Clients in the Vendor Fiscal Intermediary (VFI) Option;
- adult day care or adult foster care facilities; and
- intermediate care facilities for persons with mental retardation

Facilities, agencies and VFI clients may not employ a person in a position, the duties of which involve direct contact with a client, if the facility or agency determines, as a result of a criminal history check, that a person has been convicted of an offense listed in this chapter that bars employment. May not employ a person that a conviction not listed below is a contraindication to employment with the consumer(s) the facility/agency/VFI serves.

Sec. 250.006 Convictions Barring Employment

Any offense under:

1. Chapter 19, Penal Code (criminal homicide);
2. Chapter 20, Penal Code (kidnapping and unlawful restraint)
3. Section 21.11, Penal Code (indecentcy with a child);
4. Section 22.011, Penal Code (sexual assault);
5. Section 22.02, Penal Code (aggravated assault);
6. Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
7. Section 22.041, Penal Code (abandoning or endangering child);
8. Section 22.08, Penal Code (aiding suicide);
9. Section 25.031, Penal Code (agreement to abduct from custody);
10. Section 25.08, Penal Code (sale or purchase of a child);
11. Section 28.02, Penal Code (arson);
12. Section 29.02, Penal Code (robbery); or Section 29.03, Penal Code (aggravated robbery);
13. Section 29.03, Penal Code (aggravated robbery); or
14. A conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are similar to the elements of an offense listed under items 1 - 13 above.

Employee Relationship Test

Before an attendant can be hired to work for you, that person must pass an employee relationship test. This means that certain persons cannot work for you as your paid attendant.

Please remember that you have signed the *Employee Relationship Acknowledgement Form* acknowledging this information.

Documentation Required For Selected Attendants

Service Agreement

- Once you have selected your PAS or Respite attendant(s), you and your chosen attendant(s) must sign a service agreement. You must provide the VFI agency with a copy of the service agreement for each attendant hired.

The *Service Agreement Between VFI Client and Employee*, in the required format, can be found in *Required Forms, Pg. 26*.

Part of the Service Agreement you sign with each attendant is the House Bill (HB) 456 acknowledgment. This form acknowledges that both you and your attendants acknowledge that if you train your attendant to provide certain skilled tasks, you are taking responsibility for those tasks. This form also acknowledges that you may not have your attendant provide skilled tasks under the PHC program.

- You must inform each attendant in writing that you are his/her employer. The attendant must be informed that you, as the employer, have liability for them. The attendant must understand that he/she is not an employee of the VFI agency.

The signed *Liability Acknowledgement (Required Forms, Pg. 32)* must be on file for each attendant.

- If you have opted not to provide Worker's Compensation Insurance, be sure you have a copy of TWCC Notice 5 signed by each attendant in your files.

Other Government Agency Forms

In addition to the forms required by the VFI option of your DHS services, there are forms required by other state and federal agencies.

Copies of many of the forms required by other government agencies can be found in the *Government Forms*. Please note that this list is not all inclusive of all possible forms, documents, and reports that may be required by all governmental agencies.

Training Your Attendants

You, as the employer in the VFI option, are responsible for all training for your attendants. General training of your attendants needs to include the following:

- Philosophy of Community Integration and Consumer-Directed Services
- Nature of your disability
- Type of care needed
- Safety precautions
- Universal Precautions
- Hepatitis B Information

You must document that each attendant was offered the opportunity to obtain a Hepatitis B vaccine and was trained on Universal Precautions.

- The *Occupational Exposure to Bloodborne Pathogens/Hepatitis B Acknowledgement (Required Forms, Pg. 35)* must be signed by each attendant hired.
- If your attendant decides to obtain the Hepatitis B vaccine, the costs may be claimed and reimbursed as an administrative cost. (See *Administrative Cost Reimbursement*)
- There is information you can use for training on Universal Precautions in *Reference Materials*.

In addition to the general training listed above, you need to provide each attendant with specific training regarding the following topics:

- The specific tasks he/she will perform for you,
- The hours and days he/she is expected to work and the need for advanced notice to you when he/she is unable to work the scheduled hours,
- The rate of pay, pay period, pay days, and benefits he/she will receive,
- Overall expectations related to his/her job performance,
- Performance evaluations, and
- Under what conditions he/she may be released or fired from their duties.

All training you provide to your attendants must be documented in writing.

- In *Sample Forms* are a number of forms that will guide you through the areas you need to address related to your attendant's responsibilities.
- There are also sample employment agreements available in the *Recruitment, Management and Training of Personal Assistants Handbook* that are useful in documenting your expectations.
- You may create your own forms for documentation of the training you provide your attendant. Just be sure to document the training in writing.

No matter what forms you use, it is important that you personally review them with your PAS or Respite attendant and be sure he/she understands what is expected. It may also be useful to have both of you sign and date the form so that future misunderstandings can be avoided.

Setting Your Attendants' Specific Tasks

Specify with each PAS or Respite attendant the tasks that you expect him/her to perform while on the job. Give your attendant specific information regarding how to perform each task.

If you are a CBA or MDCP client, you may choose to train your attendant to perform certain skilled nursing tasks without any intervention from a licensed or registered nurse. In accordance with HB 456, if the tasks listed below are skilled tasks for you, you may opt to train your attendant you to perform them for you:

- bathing, including feminine hygiene;
- grooming, including nail care, except for clients with medical conditions like diabetes;
- feeding, including feeding through a permanently placed feeding tube;
- routine skin care, including decubitus Stage 1;
- transferring, ambulation, or positioning;
- exercising and range of motion;
- the administering of a bowel and bladder program, including suppositories, catheterization, enemas, manual evacuation, and digital stimulation; and
- administering oral medications that are normally self-administered, including administration through a gastrostomy tube.

The tasks listed above are not always skilled tasks. Please note that PHC is not a skilled service. Therefore, PHC clients may not train their attendants to perform any skilled tasks.

Setting Your Attendants' Hours & Work Days

Specify with each PAS or Respite attendant the hours per day and days per week that you expect him/her to be on the job. Stress to them the importance of a regular schedule and advanced notice of days or hours they are not available.

Setting Your Attendants' Pay Rate, Pay Period, & Benefits

Your PAS or Respite attendant's rate of pay, benefits and pay period should be discussed with them when you hire them. After you have hired them, tell them when and how to complete their time sheets and when they are due to you. To ensure your attendant is paid, be sure you are using the timesheet (or alternate format) provided by your VFI agency.

Expectations, Performance Evaluations & Reasons for Dismissal

Discuss with each PAS or Respite attendant your overall expectations of their employment. Inform your attendant when to expect performance evaluations from you, and what actions can result from these performance evaluations. Be sure to tell your attendant what actions can lead to dismissal or disciplinary action regarding their employment.

Be Prepared with Back-up Attendants

As you hire your primary PAS or Respite attendant, strongly consider hiring "back-ups" for emergency situations. Have them complete all of the necessary paperwork as required of your primary attendants so they will be ready to provide services when needed. Criminal history checks will also need to be done on these employees.

➔ Remember, you are the only one responsible for providing any back-up attendants.

Neither the VFI agency nor DHS is responsible for providing any back-up services. One option for back-up care is to enter into a private agreement with a provider agency to provide back up attendants. Please note, however, that a provider agency is not required to enter into a private agreement with anyone to provide services; even if that agency has a contract to provide DHS services.

Reimbursement And Payroll Process

Attendant Payroll

In order to process your payroll, and issue a check to your attendant, the VFI agency must have documentation indicating how much time your attendant worked. In addition, you must inform the VFI how much in other benefits, such as vacation pay, sick pay or bonuses, to pay your attendant. Your VFI agency will provide you with the appropriate timesheet format for your attendant to document his/her time. Be sure you are using the correct format provided by your VFI. This will ensure your attendant is paid timely.

Your VFI agency will also inform you of the deadline for submitting timesheets to them for payroll processing. You will want to ensure you or your attendant submits the timesheets to the VFI agency on time. Again, this is to ensure timely payment of your attendant.

If your VFI has informed you that you may e-mail your attendant's timesheets, you still must keep a paper copy of the timesheet on file. Both you and your attendant must sign this paper copy.

Administrative Cost Reimbursement

When you pay any allowable administrative costs yourself, you are required to submit a receipt to the VFI agency before you are reimbursed by the VFI agency for the expense. If payment is due to a vendor, an invoice must be submitted. The VFI agency has 30 working days from the date they receive receipts and invoices to reimburse expenses incurred.

Definitions of a receipt and of an invoice are as follows:

Receipt: Verification Of Payment

If you have paid for an allowable item or service out of pocket, a receipt is required in order for you to receive reimbursement. Once you have presented a proper receipt to the VFI agency, reimbursement will be made directly to you.

- The elements needed for something to be accepted as a receipt include the requirement that the item be marked *Paid*. The intent of this criterion is that the receipt provides objective evidence that payment for the item or service was actually made by you.

- It is not required that the receipt contain the actual word *Paid* if payment is verified using another word or statement. Examples of other words that indicate an item was paid for include "cash", "amount tendered" (followed by the appropriate dollar figure), a check number and amount, or an entry showing a zero balance due. As long as a receipt contains a clear indication that the vendor has received payment from you for the item or service, the element for a receipt requirement is met.
- **Note:** Documentation that is marked "charge", shows an unpaid balance, or does not clearly indicate that an item/service was paid does not meet the requirements of a "receipt." Until a valid "receipt" is submitted, you will not be reimbursed for the item/service. Follow up will also continue to be required if you or someone other than the actual vendor marks a receipt as *Paid* because the purpose of a receipt is to provide objective evidence of payment.

Invoice: Verification Of An Item/Service Being Delivered

An "invoice" indicates that payment is due to a vendor for an item or a service that has been provided by the vendor to you. The VFI agency makes reimbursements for allowable charges to the vendor. The invoice must contain the following:

- name and address of the vendor,
- date of delivery of the item/service,
- item/service provided,
- unit cost of the item/service,
- number of units (items, hours, etc.) provided,
- total cost including sales tax, delivery charges, and other allowable charges.

The receipt or invoice must include specifications of the service purchased, date service was delivered / purchased, and the vendor's name and identifying information. Each receipt and each invoice presented for reimbursement must be legible, verify how the purchase of an allowable service pertains to the PAS employment-related cost, and not be dated prior to the date you were authorized for the VFI option. You may request payment for advertising costs incurred and criminal history checks performed prior to your VFI authorization date.

Cautions Regarding Receipts and Invoices

- You will not be reimbursed for any out-of-pocket expense(s) that lack properly prepared receipts.
- Invoices will not be paid if the vendor does not properly prepare the invoice.
- A proper receipt must be provided to the VFI agency before you will be reimbursed for allowable expenses you incur
- A proper invoice must be provided to the VFI agency before any payment will be made to a vendor for allowable expenses.
- "Late Charges," "Finance Fees," and other charges assessed by the vendor are not reimbursed by the Medicaid program regardless of responsibility for the payment of the charge. If the vendor charges a late fee or finance fee due to your delay or oversight, you are personally responsible for payment of the assessed fee(s). If the VFI agency caused the fee(s) to be assessed due to delay or oversight, the VFI agency is responsible for payment of the fee(s).

Allowable Costs

You can be reimbursed for administrative costs you incur related to your PAS services. Your VFI agency will help you to determine what is an allowable administrative cost, and what is not.

- If you have a question if something is considered an allowable cost, verify with the VFI agency before you pay for the item or service.
- If the item or service is not an allowable cost, you cannot be reimbursed, even if you have already paid out of pocket.
- In addition, if a vendor invoices an item that turns out to be not allowable, the invoice will not be paid. Any charges due to an unallowable cost not being paid will be your responsibility.

A PHC 1929b client must include the cost for ongoing and annual assessments by a Registered Nurse in their budget. A PHC 1929b client must allow for an hour of nursing at the authorized rate for nursing services provided by a Registered Nurse in the Community Based Alternatives (CBA) program. The current amount for this rate can be found on the Rate Analysis section of the DHS website at:

<http://www.dhs.state.tx.us/programs/rad/community.html>

After completion of the assessment for a service plan change or an annual review, the home health agency that performed the assessment will send you an invoice for the assessment. This invoice should be forwarded immediately to the VFI agency for payment.

On the next page is a chart that shows the breakdown of costs, for service delivery and administrative costs. While this is not an all-inclusive list, it is a good start.

<div> <div>Attendant Compensation Costs</div> </div>	
SALARIES/WAGES:- <i>(Includes Employee-Paid Payroll Taxes:)</i> Regular Time Overtime Bonus Paid Vacation Leave Paid Sick Leave Paid Other Leave (Jury Duty, Funeral, etc.) Contracted Rate (to agency for Contracted PAS (back-up, etc., or In-Home Respite))	EMPLOYEE BENEFITS/INSURANCE Health/Medical/Dental: premiums and paid claims Disability Insurance: premiums and paid claims Life Insurance: premiums Employer-Paid Contributions to: Deferred Compensation Plans Retirement/Pension Plans Child Day Care Accrued Leave
PAYROLL TAXES (EMPLOYER-PAID): FICA Medicare TUCA FUTA Other as applicable	MILEAGE REIMBURSEMENT For business use of personal vehicle (Client to appointments, shopping) If commuting travel is paid, it is taxed, as a "benefit" to the employee.
WORKERS' COMPENSATION COSTS:- Premium Costs Paid Claims Other Premium/Claims for Employee Work-Related Injury/Illness Coverage	ATTENDANT COSTS PAS (back-up, etc.) and In-Home Respite when contracted through the Home Health Agency <i>[Does NOT apply to an employee of the consumer.]</i>

<div> <div>Administrative & Employer-Related Expenses</div> </div>	
EMPLOYMENT-RELATED EXPENSES:- Advertising/Recruitment Costs Employee Training Criminal History Checks Equipment, i.e.: Supplies: (e.g., Gloves) Uniforms: (e.g., Employee Aprons)	EMPLOYER-RELATED ALLOWABLE EXPENSES:- Copy Expense Mailing Costs Travel Costs (other than mileage reimbursement)
	VFI Enrollment Fee: Set amount paid to VFI Agency if the Client withdraws from the VFI Agency within the first 90 days with the agency.
Note: If the mileage cost is a reimbursement, it is not taxed and is not a benefit for the attendant. There must be documentation showing exact mileage amounts.	
Note: If employee's commuting travel is paid as an allowance, it is taxed and is a benefit for the attendant. There would be no documentation showing exact mileage.	

Supervising Your Attendant

Overall Expectations for Your Attendant

It is important for you, the employer, and your attendant to discuss your expectations of him/her, the importance of having open communication and how his/her performance will be evaluated. Both you and your attendant will have expectations of each other. You will want to talk about how issues will be addressed and resolved and the communication style you respond to best.

The following open-ended questions are a guide to start the communication process.

Discussions you should both have:

- What I expect from you is
- What you should expect from me

Issues you should address with each attendant at the start of employment:

- My approach to dealing with problems or issues is
- Performance will be evaluated using the following criteria
- Some of the reasons for dismissal from this job are (examples: abuse, neglect, exploitation, unexcused absences, etc)

Performance Evaluation

Give your attendant a copy of their performance evaluation when they first start working so they will know the areas in which they will be reviewed. Also let them know if a bonus is attached to results of their evaluation.

You should have on-going conversations with your attendant so that they know if they are meeting your expectations. If there are problems, they should be addressed immediately. There should be no negative issues in the performance evaluation that have not already been discussed with your attendant.

When you meet with your attendant for the evaluation, there should be two-way communication. Have some ideas of what you want to say in each area of the evaluation but also be prepared to list comments from your attendant.

There is a sample performance evaluation in *Sample Forms*.

Conflict Resolution and Termination

As with any employment situation there will be some areas of conflict at times between you, as the employer, and your attendant, as the employee. Sometimes conflict is due to poor job performance on the part of the attendant. Perhaps the training the attendant received did not address procedures and techniques that you need him/her to perform. If you suspect this might be the case, re-train your attendant on the aspects of the job that are causing him/her difficulty. Many times this "refresher course" will solve what seem to be serious problems.

Punctuality is a frequent problem for some attendants. If a pattern begins, address this issue with your attendant immediately. Convey the importance of their timeliness to your life. Get them to agree to a timeframe. If they continue to violate that timeframe, let him/her go.

There are other times when an attendant and the employer simply just do not get along due to personality differences. Perhaps the person you thought would be a perfect attendant turns out just the opposite. Before you give up completely on the relationship, here are a few suggestions to try to solve the problem:

1. **Keep the lines of communication open.** When a conflict arises, do not shut down. Keep talking, and try to find out the true reasons behind misconduct. The problem will not go away by ignoring it.
2. **Bring in a third person to help settle the conflict.** An arbitrator who is objective can often find a resolution that both parties can live with.
3. **Look to your written contract for resolution.** A written contract helps prevent or clear up disagreements about duties, salary, time off and benefits. This is another good reason to have a complete clearly written contract between you and your assistant.
4. **In genuine differences of opinion, look for compromise.**

If all else fails, then you must take the responsibility of terminating the attendant. It may be due to failure to follow safety procedures, chronic lateness, inability to follow directions, or personality conflicts, but whatever the reason, it is never easy to do. The exact method you use is up to you. Below are suggested ways to handle the difficult task of terminating an employee.

1. Do it in person yourself, or do it over the phone if you feel more comfortable with this approach. (You may want to have a neighbor, friend or relative with you when you terminate the employee.)
2. Do not drag it out. Be direct and come straight to the point.

3. Some suggested methods of communicating the termination are: "I'm sorry, but I do not feel you are appropriate for this job," "You are not fulfilling your job obligations," or "I won't be needing your services any more."
4. It is your choice as to whether or not you give the traditional two-week notice.
5. Watch what you say to others about the situation, especially to other assistants. It is required that you maintain confidentiality related to employee issues.
6. Analyze what went wrong to avoid similar situations in the future with other employees.
7. It is recommended that you make arrangements for back-up coverage prior to terminating an attendant. Refer to *Protecting Your Personal Property and Personal Safety* for suggestions on steps to take when you terminate an attendant.

Record Keeping Requirements

As the employer of record, you will be required by many different laws to keep certain documentation on file. Just like your VFI agency, you will also be required to comply with the certain record keeping requirements that all Community Care Contractors must follow. You will keep the original document of some forms, and the VFI agency will keep the original of others. You will also be required to provide copies of certain forms you complete to the VFI agency for their records.

The charts labeled *Required Documentation* in *Required Forms* are a guideline of forms you will need to keep. You will need to keep the originals of some forms and copies of other forms (the VFI will have the original). The *Required Documentation* charts contain this and other useful information regarding the forms needed for the VFI option.

In addition to which forms you must keep, you must also be aware of the following requirements regarding records and documentation:

Access: The Texas Department of Human Services (DHS) and all appropriate federal, state and local agencies or their representatives must have access to records to inspect, monitor or evaluate client records, books and supporting documents pertaining to services provided and services purchased.

Retention: Records and documents must be kept for a minimum of three (3) years and ninety (90) days after the end of service delivery for any documentation required by DHS. If any litigation (lawsuits), claims or audit involving the records begins before this time period ends, the records must be maintained until all litigation, claims or audits are resolved. Medical records must be maintained for five (5) years following service delivery. Other governmental agencies may require that some documents and support documents be retained for longer periods than DHS. The longer of the two periods is the time frame that must be met.

Maintenance: Active records must be accessible. Inactive records must be stored and maintained in a safe area to ensure the confidentiality and condition of the records. The stored records must be accessible for inspection. Someone must be responsible for adequately maintaining and accessing the records.

VENDOR FISCAL INTERMEDIATRY (VFI) OPTION SERVICE AGREEMENT BETWEEN VFI CLIENT and VFI AGENCY

- ☐ This agreement is made between _____, a contracted Texas Department of Human Services (DHS) Community Care for the Aged And Disabled (CCAD) Program provider, hereafter referred to as "VFI Agency," and _____, a CCAD Program participant, hereafter referred to as "Client." The "Client" is the employer of record for the VFI Option.

-OR-

- ☐ This agreement is made between _____, a contracted Texas Department of Human Services (DHS) Community Care for the Aged And Disabled (CCAD) Program provider, hereafter referred to as "VFI Agency," and _____, guardian of CCAD Program participant _____. The guardian is hereafter referred to as "Client." The "Client" is the employer of record for the VFI Option.

NOTE: Guardian is defined as (1) a parent of an individual under the age of 18 (minor), (2) other legal parent of a minor, or (3) a court appointed guardian of an individual 18 years of age or older. When a minor-aged individual turns 18 and there is no court appointed guardian, this service agreement is null and void. If/when the guardian status of either the guardian or the CCAD Program participant changes, this service agreement is null and void.)

The CCAD Program participant is an eligible recipient of the _____ Program. The program is a publicly funded program through (Check [4] Each Applicable Funding Source(s)): [] Medicaid; [] State General Revenue; [] Block Grant; [] Other: Specify- _____.

I. Client

- A. By this service agreement, the client chooses the VFI Agency to be the provider of vendor fiscal intermediary services in the VFI payment option, for administrative-related functions, as an eligible recipient of the CCAD Program.
- B. The client agrees to give prior, or immediate notice when prior notice is not an option, to the VFI Agency of any change(s) in the status of the "Client" named in this service agreement. The change may be related to guardianship status and/or the legal status of the program participant and/or of the guardian (minor/adult; _____ capacitated/incapacitated; _____ etc.).

CLIENT: _____ Initials, _____ Date

VFI: _____ Initials, _____ Date

- C. The rules are located at Title 40, Social Services & Assistance, Part I, Texas Department of Human Services, Chapter 41, Vendor Fiscal Intermediary Payments TAC Section Number(s) §41.101, Definitions; and §41.105, Consumer Responsibilities. The Client acknowledges §41.103, Contractor Responsibilities. See Appendix A of this service agreement.
- D. The Client agrees to adhere to the DHS CCAD program policies and procedures specific to the program in which the Client is a recipient and the application of the VFI Option in the DHS CCAD program.
- E. Client agrees to notify the Case Manager and the VFI Agency of each hospitalization and any change of address or residency within 24 hours of event.
- F. The Client agrees to adhere to all laws and regulations of federal, state, and local agencies related to being an employer.
- G. The Client acknowledges that he/she assumes employer-related responsibilities and liabilities to include:
 - i. Liability for any negligent acts or omissions by the Client, the Client's employee(s) and Respite Providers, the Client's Designated Responsible Party (if applicable), and
 - ii. Managing the risk of and the incidence(s) of employee work related injury/injuries.
- G. The Client agrees that DHS and the VFI Agency have no liability related to the Client's employer status on behalf of the Client or with the employee(s) or vendors of the Client.
- H. The Client agrees that participation in the VFI Option is the choice of the Client and that the Client may terminate participation in the VFI Option and/or to transfer to another VFI Agency for receipt of vendor fiscal intermediary services as provided in program policy.

II. VFI Agency

- A. By this service agreement, the VFI Agency acknowledges that the Client has chosen the VFI Agency for the purpose of performing administrative and intermediary responsibilities of the Vendor Fiscal Intermediary (VFI) Option on behalf of the Client.
- B. The VFI Agency agrees to provide the Client with vendor fiscal intermediary support and perform administrative and intermediary functions

- C. The VFI Agency agrees to adhere to the rules of the DHS CCAD VFI Option. The rules are located at Title 40, Social Services & Assistance, Part I, Texas Department of Human Services, Chapter 41, Vendor Fiscal Intermediary Payments TAC Section Number(s) §41.101, Definitions; §41.103, Contractor Responsibilities. The VFI Agency acknowledges §41.105, Consumer Responsibilities. See Appendix A of this service agreement.
- D. The VFI Agency agrees to adhere to the DHS CCAD program policies and procedures specific to the program in which the Client is a recipient and the application of the VFI Option in the DHS CCAD program.

III. Jointly: Client and VFI Agency

- A. The Client and the VFI Agency acknowledge that the funding for and of the services and activities through the VFI Option are from public sources and that fiscal accountability and the appropriate application and use of the funds is individually and jointly shared.
- B. The Client and the VFI Agency agree that the personal assistants and respite providers are the employee(s) of the Client and the Client is the employer of record and retains control over the recruitment, selection and hiring, training and management, evaluation and over the firing/termination of the employees.
- C. The Client and VFI Agency agree that the VFI Agency, DHS and the DHS CCAD program are NOT responsible or liable for any negligent acts or omissions by the Client, the Client's employee(s) or Respite Providers, and/or the Designated Responsible Party (if applicable).
- D. The Client and the VFI Agency agree that any applicable federal, state, or local regulations pertaining to the provision of the VFI payment option are hereby incorporated by reference to this agreement.

IV. Duration and Modification of Service Agreement

- A. This agreement and incorporated Appendix/Appendixes is the entire agreement and understanding between and among the Client and VFI Agency.
- B. This agreement will be in effect as of the date this agreement is signed by the Client and the VFI Agency representative and does not precede the date the CCAD program participant is eligible to participate in the CCAD program or in the VFI payment option.

CLIENT: _____ Initials, _____ Date

VFI: _____ Initials, _____ Date

- C. This agreement can be modified by agreement of both parties unless contraindicated by vendor fiscal intermediary rules, DHS, DHS CCAD program rules or policy, or by applicable state, federal, and/or local regulations.
- D. This agreement will be terminated when:
1. The Client no longer participates in the VFI Option, voluntarily or involuntarily,
 2. The Client is no longer an eligible recipient of the DHS CCAD program, or
 3. The Client requests a transfer to a different VFI Agency for vendor fiscal intermediary services and the transfer is completed in compliance with the CCAD program transfer policy.

V. **Acknowledgement of Service Agreement:** By signature affixed below and by initial of each page of the Service Agreement and incorporated Appendix/Appendixes:

CLIENT:

VFI Agency:

Signature: Client

Signature: VFI Agency

Signature Date: Client

Signature Date: VFI Agency

APPENDIX A Page 1 of 4: Final Rule – VFI Option

Vendor Fiscal Intermediary (VFI) Option Program Rules

Title 40, Social Services & Assistance, Part I, Texas Dept. of Human Services

Chapter 41, Vendor Fiscal Intermediary Payments

TAC Section Number(s) §41.101, §41.103, and §41.105

' **41.101 Definitions.** The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

(1) Consumer--An eligible recipient of a Community Care for the Aged And Disabled (CCAD) program or a Medicaid Waiver program that provides personal assistance services. In the Vendor Fiscal Intermediary (VFI) model, the consumer or his legal guardian is the employer of and retains control over the hiring, management, and termination of an individual providing personal assistance or respite.

(2) Personal assistant--In the VFI model, a person who is employed by the consumer to provide personal assistance through any CCAD program or Medicaid Waiver program.

(3) Vendor Fiscal Intermediary (VFI)--A CCAD contractor who participates in the VFI model and is responsible for employer administrative related functions.

(4) Vendor Fiscal Intermediary model--The payment option in which the consumer controls the recruitment, hiring, management, and firing of their personal assistants. A fiscal agent or VFI handles employer-related administrative functions that include payroll for the personal assistants and substitute (back-up) personal assistants and filing tax-related reports of personal assistants. The consumer is the employer of record.

' 41.103. Generic Contractor Responsibilities under the Vendor Fiscal Intermediary (VFI) Model.

This rule applies to all Community Care for the Aged and Disabled (CCAD) and Medicaid Programs that offer the VFI model of payment, unless stated differently in program rules. Contractors for any VFI model within Texas Department of Human Services (DHS) CCAD programs must:

(1) contract with DHS to handle payroll, prepare and file tax-related forms and reports for Workers' Compensation, state and federal unemployment, Medicare, and Federal Insurance Contributions Act (FICA), and pay for other approved related expenses;

(2) train the consumer in VFI program requirements and any other legal requirements, such as the Occupational Safety and Health Act;

(3) provide the consumer with information, orientation, and training, as needed, concerning fiscal and payroll responsibilities and obligations as employers of personal assistant(s) and;

(4) act as the agent for the consumer for the purpose of:

(A) registering the consumer as an employer, including providing assistance to the consumer in completing forms required to obtain an employer identification number (EIN) from federal agencies, state agencies, and unemployment insurance agencies;

(B) taking the appropriate action to file for employer agent status with the federal and state tax authorities and successfully obtaining agent status;

(C) making all deposits of unemployment taxes that are withheld according to the appropriate schedule;

(D) assisting the consumer in acquiring workers' compensation insurance for the consumer's personal assistant who is the consumer's employee, if the consumer provides workers' compensation;

APPENDIX A, Page 2 of 4: Final Rule – VFI Option

(E) computing and paying federal and state employment taxes, including federal withholding FICA (employer and employee shares), local taxes (optional), unemployment compensation taxes, workers' compensation insurance (if applicable), and other payments required as appropriate, within specified timeframes;

(F) preparing and filing income tax forms and reports within specified timeframes;

(G) maintaining original and file copies of all forms needed to comply with federal, state, and local tax payment of unemployment compensation premiums, and all other reporting requirements of employers;

(H) remitting the required forms to the appropriate state agency and maintaining copies of the forms in the consumer's file upon receipt of the required completed forms from the consumer. The VFI must return copies of all forms to the consumer for the consumer's permanent personnel records;

(I) receiving and processing personal assistant care timesheets, processing the payroll for the consumer's personal assistant(s) upon receipt of the approved timesheets, preparing the payroll for the consumer's personal assistant(s), performing appropriate income tax, FICA, workers' compensation (if applicable), and other withholding according to federal and state regulations;

(J) preparing payroll for the consumer's personal assistant(s) according to approved time sheets after making appropriate deductions;

(K) distributing payroll checks to the consumer's personal assistant(s) according to the VFI's check distribution policy. Distribution must be at least twice a month;

(L) providing, at the consumer's request, the consumer with regular summaries of payroll and deductions made on the consumer's behalf; and

(M) answering questions and distributing information to concerned parties pertaining to the VFI's responsibilities.

(5) at the request of the consumer, conduct checks of criminal conviction of personal assistants directly from the Texas Department of Public Safety (DPS) Conviction Data base website and provide the history of convictions to the consumer. If the consumer prefers to request the check from DPS, or to require the personal assistant to obtain the information from DPS, this task does not need to be performed by the VFI. The consumer cannot employ the personal assistant until after the criminal history check is obtained.

(A) The VFI must also document that the consumer was informed of the criminal history results or that the consumer chose to obtain the criminal history information themselves or through the personal assistant rather than through the VFI. If there is a criminal record that prevents employment according to state law, the participant cannot hire the prospective personal assistant.

(B) If there is a criminal history result that does not prevent employment by Chapter 250 of the Health and Safety Code, the VFI must document that the consumer was informed of the result. In this case, the VFI must document that the consumer was informed of the criminal history results and that the consumer prefers to hire an employee with a criminal history (when this is not prevented by Chapter 250 of the Health and Safety Code);

(6) keep a record of expenses paid, related to personal assistant services.

(7) based on each personal assistant's time sheets and other documentation, pay for each of the consumer's costs incurred relating to personal assistant services, such as substitute (back-up) personal assistants and health insurance, not to exceed the authorization given by the contractor. Invoice payment must be made within 30 working days of the VFI's receipt of the invoice;

APPENDIX A, Page 3 of 4: Final Rule – VFI Option

(8) pay costs incurred relating to personal assistance services, such as recruitment (including advertisement, travel, or telephone calls), and provision of substitute (backup) personal assistants, not to exceed the authorization given by DHS. Payment to the consumer must be made within 30 working days of the VFI receiving the receipt from the consumer;

(9) serve as the consumer's fiscal intermediary for unexpended funds within the fiscal year;

(10) maintain record keeping of the reimbursement received, payroll disbursed, and consumer account balances;

(11) comply with all state and federal rules, laws, and regulations; and

(12) retain an amount of the unit rate for personal assistant services approved by DHS as an administrative payment.

' 41.105. Generic Consumer Responsibilities under the Vendor Fiscal Intermediary Model.

Consumers choosing the vendor fiscal intermediary (VFI) model within any Texas Department of Human Services (DHS) Community Care for the Aged and Disabled (CCAD) program must:

(1) be capable of performing all employer tasks that the VFI model requires, or appoint a designated person to perform these employer tasks and participate in the training offered by the VFI as specified in 41.103(2) of this title (relating to generic contractor responsibilities under the vendor fiscal intermediary (VFI) model).

(2) appoint the VFI as the consumer's fiscal and payroll agent;

(3) request criminal history checks of personal assistant(s), either through the VFI, personal assistant, or directly from the Texas Department of Public Safety Conviction Data base website and consider this information in determining whether to hire the personal assistant(s) as per Chapter 250 of the Health and Safety Code. An individual cannot be hired as a personal assistant until the criminal history check is obtained;

(4) provide substitute (backup) personal assistant(s);

(5) resolve any employer/employee-related problems or disagreements directly with his personal assistant(s);

(6) make payroll spending decisions pertaining to provisions of personal assistant services and wages and any personal assistant employment-related costs within the consumer's authorized individual service plan, including:

(A) using the approved budget to cover related personal assistant employment expenses incurred by the consumer, such as recruitment, requesting a criminal history check or an open records check (which is more in-depth than a criminal check) of a potential employee, and provision of substitute (backup) personal assistants;

(B) providing the personal assistant with one or more of the optional benefits selected from the following list: increased wages, paid vacation, health insurance, workers' compensation, work-related travel expenses, and bonus, holiday, overtime, and sick pay.

If the consumer elects not to provide workers' compensation insurance coverage for the personal assistant, the consumer must disclose this election to the personal assistant by having the personal assistant sign a written notice that workers' compensation will not be provided;

(C) purchasing more hours of personal assistant services by paying a decreased rate per hour when the consumer's services are at the maximum allowed by the program as long as the total amount does not exceed the authorized service plan amount for the category of service and the hours are used for the purpose of the program; and

APPENDIX A, Page 4 of 4: Final Rule – VFI Option

(D) purchasing other authorized services related to personal assistant services, provided the services are covered by the consumer's budget plan developed by the VFI in conjunction with the consumer. The VFI must not pay for services excluded from the service plan, non-allowable costs according to DHS rule, or for services that exceed the service plan.

(7) not discriminate against personal assistants or applicants based on race, creed, color, national origin, sex, age, disability, or sexual orientation;

(8) perform all other employer tasks except for employer-related administrative functions specifically assumed by the VFI;

(9) notify the VFI of all personal assistant enrollments, substitutions, dismissals, and the reasons therefore;

(10) specify the tasks the personal assistant is to perform for the consumer, the schedule the personal assistant will work for the consumer, the hourly rate (which must be at least the minimum wage level) the consumer will pay the personal assistant, timeframes (at least twice a month) the VFI will pay the personal assistant, and benefits the personal assistant will receive;

(11) submit to the VFI receipts or invoices for personal assistance services related costs as specified in paragraph (6)(D) of this section. The consumer cannot receive reimbursement for those services lacking copies of receipts. The copy of the receipt or invoice must be legible, verify how purchase of an allowable service pertains to the personal assistant employment-related cost, and not be dated prior to the date the individual was certified eligible for the CCAD program or prior to the date the VFI option was chosen. Additionally, the copy of the receipt or invoice must include specifications of service purchased, date service was purchased, and the vendor's name and identifying information. The receipt must be marked paid. If the consumer does not provide required invoices, the VFI must not make payments;

(12) accept services through a non-vendor fiscal intermediary model for three months if the consumer discontinues services through the VFI model. If services are discontinued due to consumer inability or refusal to comply with responsibilities, a VFI and DHS representative or designee must review consumer's plan for correction of previous deficiencies before re-initiation of the VFI model;

(13) assume liability. Personal assistants of consumers participating in the VFI model are considered employees of the consumer. The consumer is the employer of record and retains control over the hiring, management, and firing of an individual providing personal assistance services. Personal assistants are not employees of the VFI or DHS, and the VFI and DHS are not responsible or liable for any negligent acts or omissions by the personal assistant or the employer;

(14) assume all disability related training for the personal assistant including nature of the disability, type of care needed, steps in carrying out procedures, and safety precautions;

(15) perform annual evaluations and provide ongoing feedback regarding job performance to all personal assistants;

(16) change to the agency model on VFI's recommendation, if there is a documented, substantiated pattern of consumer's refusal or inability to comply with the responsibilities listed in paragraphs (1)-(15) of this section. With concurrence from the authorized DHS representative, this recommendation will be enacted immediately. A request for a hearing to appeal the decision may be made in accordance with program guidelines; and

(17) consumer complaints regarding actions of the VFI or the personal assistant relating to abuse, neglect, and exploitation, will be addressed to the authorized Texas Department of Protective and Regulatory Services (TDPRS) representative.

VENDOR FISCAL INTERMEDIARY (VFI) OPTION LIABILITY ACKNOWLEDGEMENT

Attendants and respite providers of individuals participating in the Vendor Fiscal Intermediary (VFI) Option program are considered employees of the consumer (Client) or the consumer's guardian.

The Client/guardian is the employer of record and retains control over the hiring, management, and firing of individuals providing personal assistance services and/or respite services.

Attendants and respite providers are **NOT** employees of the VFI Agency, the Texas Department of Human Services (DHS), or any other state or federal agency or any contracted provider agency, and are not responsible or liable for any negligent acts or omissions by the Attendant of the employer. Only the employer is responsible or liable for any negligent acts or omissions by the employer (Client/guardian), the designated responsible party, the employee, or by other employees of the consumer.

Acknowledged by dated signature:

_____ Employer/VFI Client or Guardian	_____ Date	_____ Employee/Attendant or Respite Provider	_____ Date
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Employer Liability Notice to Employee

Section 1. Indicate the option that applies.

____ I am a subscriber of Texas Workers' Compensation through the Texas Workers' Compensation Commission.

____ I am **NOT** a subscriber of the Texas Workers' Compensation through the Texas Workers' Compensation Commission. (Complete Section 2 of the Notice if you use this option.)

Section 2. Indicate the option that applies if you are NOT a subscriber to Workers' Comp.

____ I have made arrangements as follows for liability related to employee injuries:

- ____ Self-insurance against incidence of injury;
- ____ Homeowner's personal liability insurance against incidence of injury;
- ____ Renter's personal liability insurance against incidence of injury;
- ____ Medical coverage insurance against incidence of injury;
- ____ Risk pool insurance against incidence of injury;

____ I have NO insurance or other protection against incidence of injury for my employee(s).

Acknowledged by dated signature:

_____ Employer/VFI Client or Guardian	_____ Date	_____ Employee/Attendant or Respite Provider	_____ Date
---	---------------	--	---------------

VENDOR FISCAL INTERMEDIARY (VFI) OPTION DESIGNATION OF RESPONSIBLE PARTY

VFI Client Name: _____

Medicaid Number: _____

INITIAL DESIGNATION

The individual named below, a willing adult, has agreed by signature to serve as the "designated responsible party" for my participation in the VFI Option. Effective date of this designation is _____, _____.

Designated Responsible Party:

VFI Client:

_____ Printed

_____ Printed

_____ Signature

_____ Signature

_____ Date

_____ Date

CHANGE IN DESIGNATION

The individual named below, a willing adult, has agreed by signature to serve as the "designated responsible party" for my participation in the VFI Option. I hereby revoke my designation above and make this new designation effective on (date:) _____, _____.

Designated Responsible Party:

VFI Client:

_____ Printed

_____ Printed

_____ Signature

_____ Signature

_____ Date

_____ Date

CHANGE IN DESIGNATION

The individual named below, a willing adult, has agreed by signature to serve as the "designated responsible party" for my participation in the VFI Option. I hereby revoke my designation above and make this new designation effective on (date:) _____, _____.

Designated Responsible Party:

VFI Client:

_____ Printed

_____ Printed

_____ Signature

_____ Signature

_____ Date

_____ Date

Instructions: The VFI Client retains the origin for his/her records. The VFI Client provides a copy of the "INITIAL Designation" and of each "CHANGE In Designation" to the Designated Responsible Party, the VFI Agency and your DHS Caseworker within 5 calendar days of the signature date.

PAGE ____ OF ____

VFI Client Name: _____
Medicaid Number: _____

CHANGE IN DESIGNATION

The individual named below, a willing adult, has agreed by signature to serve as the “designated responsible party” for my participation in the VFI Option. I hereby revoke my designation above and make this new designation effective on (date:)

_____, _____.

Designated Responsible Party:

_____ Printed

_____ Signature

_____ Date

VFI Client:

_____ Printed

_____ Signature

_____ Date

CHANGE IN DESIGNATION

The individual named below, a willing adult, has agreed by signature to serve as the “designated responsible party” for my participation in the VFI Option. I hereby revoke my designation above and make this new designation effective on (date:)

_____, _____.

Designated Responsible Party:

_____ Printed

_____ Signature

_____ Date

VFI Client:

_____ Printed

_____ Signature

_____ Date

CHANGE IN DESIGNATION

The individual named below, a willing adult, has agreed by signature to serve as the “designated responsible party” for my participation in the VFI Option. I hereby revoke my designation above and make this new designation effective on (date:)

_____, _____.

Designated Responsible Party:

_____ Printed

_____ Signature

_____ Date

VFI Client:

_____ Printed

_____ Signature

_____ Date

Instructions: The VFI Client retains the origin for his/her records. The VFI Client provides a copy of each “CHANGE In Designation” to the Designated Responsible Party, the VFI Agency and the your DHS Caseworker within 5 calendar days of the signature date.

PAGE ____ OF ____

VFI Client Name: _____
Medicaid Number: _____

CHANGE IN DESIGNATION

The individual named below, a willing adult, has agreed by signature to serve as the "designated responsible party" for my participation in the VFI Option. I hereby revoke my designation above and make this new designation effective on (date:)

_____, _____.

Designated Responsible Party:

VFI Client:

_____ Printed

_____ Printed

_____ Signature

_____ Signature

_____ Date

_____ Date

.....
After you have had one or more Designated Responsible Parties assist you with the VFI Option, you may decide to assume the responsibilities of being an employer yourself. If you decide not to use a Designated Responsible Party in the VFI Option, document your decision below.

**DECISION NOT TO HAVE A
DESIGNATED RESPONSIBLE PARTY**

I hereby revoke my designation of a Designated Responsible Party for my participation in the VFI Option effective on (date:) _____, _____. I have decided that I will fulfill the role of employer in the VFI Option without the use of a Designated Responsible Party.

VFI Client:

Witness:

_____ Printed

_____ Printed

_____ Signature

_____ Signature

_____ Date

_____ Date

Instructions: The VFI Client retains the origin for his/her records. The VFI Client provides a copy of each "CHANGE In Designation" to the Designated Responsible Party, the VFI Agency and your DHS Caseworker within 5 calendar days of the signature date.

Vendor Fiscal Intermediary (VFI) Option
Personal Assistance Services (PAS) Budget Workbook
General Information and Instructions for Use of Workbook

THIS PAGE IS NOT CONSIDERED PART OF CLIENT BUDGET

*	Enter the appropriate information in the "Blue" cells (the cells with "dashed" lines around them). Be sure the information you enter is accurate, as the budget calculations are based on the entries made in these cells.
*	Use the "TAB" key to move between the "Blue" cells. Entries may only be made in the "Blue" cells; all other cells are locked. Please note that there are no manual entries on Page 2.
*	You can use the keyboard to move between the pages in the workbook. Press "CTRL" and "Page Down" at the same time to move to the next page; Press "CTRL" and "Page Up" at the same time to move to the next page.
*	Complete the entire Workbook (Pages 1-4) for each Client at the following times: Initially Change in Attendant Change in Attendant Pay Rate or Benefits Change in Reimbursement Rate Change in Administrative Costs Change in Payment Option back to Agency Option Change in Authorized Units
*	Be sure both the Client, Designated Responsible Party (if applicable) and the VFI Agency Representative sign Page 1 of the workbook, and that the budget Calculations are listed as "VALID" on Page 1.
*	There are "Pop-Up" information windows for many of the cells. Watch for these windows in the right-hand margin. If the "Pop-Up" windows are not in the margin, you may "drag and drop" them there (or to another convenient location).
*	Be sure to read any error messages carefully. They give you instructions on how to correct data entry errors.
*	Submit a copy of the current Budget Workbook to the appropriate Caseworker annually.

Vendor Fiscal Intermediary (VFI) Option
Personal Assistance Services (PAS) Budget Workbook
Page 1 - Client Information

Enter the Client's Name as it appears in DHS Records:			
Client Name: 			
Enter the Client's Medicaid Number as it appears in DHS Records:			
Client Medicaid Number: 			
Enter the Appropriate Code for the type of Services Authorized:			
Authorized Program Code: 			
CBA	1	MDCP Adjunct Support	2
MDCP Respite	3	PHC/FC Priority 1	4
PHC/FC Non-Priority	5	DB-MD	6
CMPAS	7		
Enter the Negotiated Rate for the CMPAS Program			
CMPAS Negotiated Rate: 			
Enter the Time Period this Budget Workbook covers:			
Coverage Period: 			
		From Date:	To Date:
Weeks in Coverage Period:		0	0
Enter the Number of PAS Units Authorized for the Coverage Period:			
Number of Units Authorized: 			
Units / Week Validation (Compare to Authorization)			
Budget Calculations are (do Pages 2 and 4 validate?):			
<p>By signature below I hereby acknowledge that all calculations must fall within the allowable budget, and that all budget calculations are VALID, as indicated above. I also acknowledge receipt of a copy of the VFI Option PAS Budget Workbook, Pages 1, 2, 3 and 4. I agree to remain within the boundaries of the budget set forth. I understand that failure to follow this budget may result in removal from the VFI Option.</p>			

Client/Guardian

Date

Designated Responsible Party (If Applicable)

Date

VFI Agency Representative

Date

Vendor Fiscal Intermediary (VFI) Option
Personal Assistance Services (PAS) Budget Workbook
Page 2 - Administrative & Compensation Allocations

Client Name

Client Number

Coverage Period From: To:

Personal Assistance Services	
A) Total PAS Hours Authorized in Service Plan (for coverage period)	
B) Total Approved Unit Rate	
C) VFI Agency Portion of Approved Unit Rate	
D) VFI Client Portion of Approved Unit Rate (<i>B minus C</i>)	
E) Total PAS Funds Allocated in Service Plan (<i>A times B</i>)	
F) Total PAS Funds for VFI Agency Portion (<i>A times C</i>)	
G) Total PAS Funds Available to VFI Client (<i>A times D, or E minus F</i>)	
H) VFI Agency Billing Percentage (<i>C divided by D</i>)	

Minimum Amount for Attendant Compensation Costs	
VFI Client Portion of Rate (<i>D</i>)	
I) Minimum % of Client Portion of Rate Required for Attendant Compensation	
J) Minimum Hourly Rate for Attendant Compensation Costs (<i>D times I</i>)	
Total PAS Units Authorized (<i>A</i>)	
K) Min. Amount for Attendant Compensation Costs (<i>J times A</i>)	

Maximum Amount for Administrative Costs	
VFI Client Portion of Rate (<i>D</i>)	
Minimum Hourly Rate for Attendant Compensation Costs (<i>J</i>)	
L) Maximum Hourly Amount Available for Administrative Costs (<i>D minus J</i>)	
Total PAS Units Authorized (<i>A</i>)	
M) Max. Amount Available for Administrative Costs (<i>L times A</i>)	

Calculation Validation	
N) Total PAS Funds Available to VFI Client (<i>D divided by B, times E</i>)	
O) Total PAS Funds for VFI Portion (<i>C divided by D, times F</i>)	
P) Total PAS Funds in ISP (<i>N plus O</i>)	
Client and VFI Portion Calculations are (<i>P equals E</i>):	
Minimum Dollar Amount for Attendant Compensation Costs (<i>K</i>)	
Maximum Dollar Amount Available for Administrative Costs (<i>M</i>)	
Q) Total PAS Funds Available to VFI Client (<i>K plus M</i>)	
Attendant Compensation & Admin. Cost Calculations are (<i>Q equals G</i>):	VALID

Vendor Fiscal Intermediary (VFI) Option
Personal Assistance Services (PAS) Budget Workbook
Page 3 - Breakdown of Category Allocations

Client Name

Client NumberCoverage Period From:

To:

Personal Assistance Services

A) Total Annual PAS Hours Authorized in Service Plan (Page 2, Item A)	
B) Total Approved Unit Rate (Page 2, Item B)	
C) Total PAS Funds Allocated in Service Plan (A times B)	
D) Total PAS Funds for VFI Agency Portion (\$1.00 times A)	
E) Total PAS Funds Available to VFI Client (C minus D)	

Estimated Administrative Costs

Maximum Amount Available for Administrative Costs:		
	Amount:	Comments:
Advertising		
Equipment & Supplies		
Copies & Mailing		
Criminal History Check		
Other - Specify		
Other - Specify		
F) Total Estimated Administrative Costs (Add all Admin. Costs)		

Estimated Additional Attendant Compensation Costs

	Amount:	Comments
Bonus (include employer taxes in amount)		
Paid Holidays (include employer taxes in amount)		
Vacation Pay (include employer taxes in amount)		
Sick Leave(include employer taxes in amount)		
Overtime (include employer taxes in amount)		
Health Insurance		
Worker's comp or liability insurance		
Other - Specify		
Other - Specify		
G) Total Est. Additional Attendant Compensation Costs (Add all)		

Hourly Pay Rate Costs

Total PAS Funds Available to VFI Client (E)	
Total Estimated Administrative Costs (F)	
Total Estimated Additional Attendant Compensation Costs (G)	
H) Total PAS Funds Available for Hourly Pay (E minus F minus G)	

Vendor Fiscal Intermediary (VFI) Option
Personal Assistance Services (PAS) Budget Workbook
 Page 4 - Hourly Wage Calculations

 Client Name

 Client Number

Coverage Period From: _____ To: _____

Employer Tax Percentages

FUTA Max Wage: _____	FUTA: _____	F.I.C.A.: _____
SUTA Max Wage: _____	SUTA: _____	Medicare: _____
A) Total Estimated Employer Tax Percentage (Add all tax category percentages): _____		

Hourly Wage Minimums and Maximums

B) Total Annual PAS Hours Authorized in Service Plan (Page 2, Item A)		
C) Minimum Allowable for Hourly Compensation (Page 2 Item K, minus Page 3 Item K)		
D) Maximum Allowable for Hourly Compensation (Page 3 Item H)		
E) Maximum Hourly Rate Before Employer Tax (D divided by B)		
F) Estimated Hourly Employer Taxes (E times A)		
G) Estimated Maximum Hourly Compensation (D minus E)		

Attendant Hours and Pay Rates

	Attendant Name	H Hrs / Wk	I Wks / Yr	J(G times H) Hrs / Yr	K Pay Rate	Annual Wages	M (K times %) Annual Taxes	N (K plus J) Annual Total
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
Total Hours Scheduled:								

O) Total Dollars Budgeted for Hourly Compensation (Add N1 through N15): _____
Dollars Needed to meet minimum:: _____ Dollars left in Client Budget: _____

Budgeted Hourly Attendant Costs Validation

Based on the Hourly Pay Rates, does the 'Total Estimated Hourly Attendant Costs' Fall Within the Required Parameters for Attendant Compensation?	Above Minimum Hourly Pay Requirement?	
	Is O greater than C?	
	Below Maximum Hourly PAS Allotment?	
	Is O less than D?	

Vendor Fiscal Intermediary (VFI) Option Criminal History Check and Registry Verification Authorization

APPLICANT AUTHORIZATION/ACKNOWLEDGEMENT:

(To be completed by applicant)

I, (print applicant's name) _____, give authorization for a check of my criminal history in the course of applying for a position as either a Personal Assistant and/or In-Home Respite provider in the Vendor Fiscal Intermediary Program. I also acknowledge that a conviction of a crime that prohibits a person from employment in a health care setting in the State of Texas applies to my application for this position. I also acknowledge that I may not be offered a position or provider service for payment before the criminal history check and registry verification is completed and reviewed by the employer.

Printed Name:

(Last) _____, (First) _____, (Middle Name) _____

(Alias) _____, (Maiden Name) _____

(Date of Birth): MM ____ DD ____ YY ____ (Race - if not black, check white): Black ____ White ____

Applicant Signature _____ Date _____

CRIMINAL HISTORY CHECK PROCESS:

(To be completed by the employer)

- ☐ The applicant will provide a current Criminal History Check from the Texas Department of Public Safety.
- ☐ As the potential employer, I will acquire a current Criminal History Check of the applicant from the Texas Department of Public Safety.
- ☐ As the potential employer, I request that my Vendor Fiscal Intermediary (VFI) Agency acquire a current Criminal History Check of the applicant from the Texas Department of Public Safety. I also authorize the VFI Agency to be reimbursed the cost of acquiring this Criminal History Check from my budgeted funds.

Printed Name of VFI Participant _____

Signature of VFI Participant _____ Date _____

REGISTRY CHECKS:

(To be completed by the employer)

1-800-452-3934

Applicant's Social Security Number: ____ - ____ - ____

Employee Misconduct Registry: _____ No Record ____ Record (not to be hired)

Nurse Aide Registry: _____ No Record ____ Record (not to be hired)

Date of Checks: _____ Checks made by (print name): _____

Signature: _____

INSTRUCTIONS:

1. Complete and sign a Criminal History Check/Authorization Form for each applicant.
2. You may **not** offer a position until the Criminal History Check and the Registry Checks are received/completed and verified for employment eligibility purposes. Only applicants meeting eligibility criteria may be offered a position.
3. If you are requesting that your VFI Agency conduct the Criminal History Check for you, contact the VFI Agency and provide the requested information from the form.
Date request was made to VFI Agency: _____; by ____ Telephone, or ____ Fax.
4. Attach the criminal history check to this form. Retain the originals for your records.
5. A copy of every Criminal History Check must be provided to your VFI Agency.
6. If the VFI Agency conducted the Criminal History Check at your request, provide a copy of this form to the VFI Agency as authorization for reimbursement.

Vendor Fiscal Intermediary (VFI) Option Employee Relationship to the VFI Client Acknowledgement

When determining who may be an employee of, or for, an individual VFI Client, consideration is to be given to:

1. In the VFI Option, “**VFI Client**” and “**employer of record**” is defined as:
 - The parent or “guardian” of a **minor** program Client.
 - An **adult** program Client (with no guardian).
 - The “guardian” of an **adult** program Client.
2. The age of the Client:
 - A **minor** is an individual under the age of 18.
 - An **adult** is an individual 18 years of age or older.
3. The legal status of the Client:
 - A **minor** has natural parent(s), legal parent(s)/adopted, step-parent(s), foster parent(s), and/or a court appointed guardian(s). No individual in any of these relationships may be an employee of the VFI Client minor. One of the adults in this relationship would be the “employer of record” in the VFI Option. The spouse of the “employer of record” may not be an employee.
 - An **adult** without a court appointed guardian is the “employer of record” in the VFI Option.
 - An **adult** that has a court appointed guardian must have that guardian as the “employer of record” for the VFI Option. The guardian’s spouse may not be an employee.
4. A willing adult may be the “designated responsible party” in the VFI Option:
 - A parent/guardian of a **minor** VFI Client may have a “designated responsible party” for the VFI Option. The parent/guardian is the “employer of record.” The “designated responsible party” and his/her spouse may not be an employee.
 - An **adult** VFI Client may have a “designated responsible party” for the VFI Option. The “designated responsible party” may be the adult Client’s parent or another willing adult. The VFI Client is the “employer of record.” The “designated responsible party” and his/her spouse may not be an employee.
5. An individual with a Power of Attorney (POA), referred to as an ‘attorney in fact’ or ‘agent,’ is considered the “designated responsible party” for purposes of the VFI Option if the POA addresses any of the responsibilities required in the VFI Option. The person with the POA may not be the employer of record, an employee, or the spouse of an employee, for the VFI Client.
6. The spouse of a VFI Client may not be an employee, regardless of the age of either the Client or his/her spouse. This is not applicable to Family Care.
7. An employee in the VFI Option must be an adult, at least 18 years of age. An adult sibling of the VFI Client may be an employee in the VFI Option as long as the sibling is not the guardian or the “designated responsible person” for the VFI Option and is not the spouse of either the guardian or “designated responsible party” in the VFI Option.
8. An employee in the VFI Option must be an adult, at least 18 years of age. An adult may be an employee in the VFI Option as long as the individual is not the guardian or the “designated responsible person” for the VFI Option and is not the spouse of either the guardian or “designated responsible party” in the VFI Option.

ACKNOWLEDGED:

_____ Employer of Record, Relationship: _____ Date: _____

_____ Designated Responsible Party, Relationship: _____ Date: _____

VENDOR FISCAL INTERMEDIARY (VFI) OPTION SERVICE AGREEMENT BETWEEN VFI CLIENT and EMPLOYEE

☐ This agreement is made between _____, a CCAD Program Participant; hereafter referred to as "Client," and _____, hereafter referred to as "Employee." The "Client" is the employer of record for the VFI Option. The "Employee" is the employee of "Client."

-OR-

☐ This agreement is made between _____, the guardian, hereafter referred to as "Client," and _____, hereafter referred to as "Employee." Client is the guardian of CCAD Program Participant _____. The guardian is hereafter referred to as "Client" and is the employer of record for the VFI Option. The "Employee" is the employee of "Client."

The CCAD Program Client is an eligible recipient of the _____ Program. The program is a publicly funded program through (Check [4] Each Applicable Funding Source(s)): [] Medicaid; [] State General Revenue; [] Block Grant; [] Other: Specify- _____.

I. Client

- A. By this service agreement, Client has hired the Employee to provide: (Check [4] Each Applicable Service)
[] Personal Assistance Services, and/or
[] In-Home Respite Services.
- B. Client agrees to give prior, or immediate notice when prior notice is not an option, to Employee of any change(s) in the work schedule and any change in the program Client's allocated funding that will directly impact the number of hours Employee is scheduled to work.
- C. The Client agrees to adhere to the rules of the DHS CCAD VFI Option and to adhere to the DHS CCAD program policies and procedures and to notify Employee of changes when related to Employee's responsibilities.
- D. The Client agrees to adhere to all laws and regulations of federal, state, and local agencies related to being an employer.

CLIENT: _____ Initials, _____ Date

EMPLOYEE: _____ Initials, _____ Date

- E. The Client acknowledges that he/she assumes employer-related responsibilities and liabilities to include:
 - i. Liability for any negligent acts or omissions by the Client, the Client's employee(s) and Respite Providers, the Client's Designated Responsible Party (if applicable), and
 - ii. Managing the risk and liability of and incidence(s) of employee work related injury/injuries.
- F. Client agrees to provide emergency contact information readily accessible to Employee during working hours.

II. EMPLOYEE

- A. By this service agreement, Employee acknowledges that the Client is participating in the Vendor Fiscal Intermediary (VFI) Option, a Texas Department of Human Services (DHS) payment option. The option utilizes public funding for payment of Employee.
- B. Employee agrees to provide services to the Client at the direction of Client and that Employee is willing and able to perform the tasks outlined in writing by Client.
- C. Employee agrees to provide information and documents as required for Client to maintain current, up-to-date personnel records. Documents may include, but are not limited to CPR Certification and identification documents for compliance with Form I-9 and other state, federal and local regulations. Client is to be notified as soon as possible by Employee of information that may include, but is not limited to changes in address and/or telephone numbers and criminal convictions.
- D. Employee agrees the property of Client and/or the Client are not for Employee's personal use. Employee agrees to pay Client for any long-distance telephone charges Employee incurs related to personal use.

III. Jointly: CLIENT and EMPLOYEE

- A. Client and Employee agree that this document is a service agreement, not an employment contract. Client and Employee agree that Client is the employer of record and that Employee is not an independent contractor.
- B. Client and Employee agree that payment for services to Employee is from public funds. Client and Employee agree that fiscal accountability, to include use of funds for services funded through the DHS CCAD program, are individually and jointly shared.

CLIENT: _____ Initials, _____ Date

EMPLOYEE: _____ Initials, _____ Date

- C. Client and Employee acknowledge that Employee is the employee of Client. Client is the employer of record and retains control over the recruitment, selection and hiring, training and management, evaluation and over the firing/termination of the employees. A Vendor Fiscal Intermediary (VFI) Agency is responsible for the administration of the funds on behalf of Client.
- D. Client and Employee agree to provide accurate accounting of services rendered and submitted accurate records for reimbursement in the VFI Option.
- E. Client and Employee agree that the VFI, DHS and the DHS CCAD program are NOT responsible or liable for any negligent acts, work related injuries, or omissions by the Client, Employee or Respite Providers, and/or, if applicable, the Designated Responsible Party.
- F. The Client and the VFI agree that any applicable federal, state, or local laws and regulations pertaining to the provision of the VFI payment option, to include provisions for nurse delegated tasks and exclusions to nurse delegated tasks (Appendix A), are hereby incorporated by reference to this agreement.
- G. Client and Employee agree that personal and medical information about the Client, Client, and Employee is confidential and is not to be discussed with others outside of the work environment. It is also agreed that such information will not be discussed with others outside of the work environment now or at any time in the future, either directly or indirectly.

IV. Duration and Modification of Service Agreement

- A. This service agreement, incorporated Appendix/Appendixes, and documents signed by Client and Employee filed in the personnel file and/or the Client's program service file, is the entire agreement and understanding between and among the Client and VFI.
- B. This agreement will be in effect as of the date this agreement is signed by the Client and Employee and does not precede the date the CCAD program Client is eligible to participate in the CCAD program or in the VFI payment option.
- C. This agreement can be modified by agreement of both parties unless contraindicated by vendor fiscal intermediary rules, DHS, DHS CCAD program rules or policy, or by applicable state, federal, and/or local regulations.

CLIENT: _____ Initials, _____ Date

EMPLOYEE: _____ Initials, _____ Date

- D. This agreement will be terminated when:
- i. The Client no longer participates in the VFI Option, voluntarily or involuntarily,
 - ii. The Client is no longer an eligible recipient of the DHS CCAD program, or
 - iii. The Client terminates employment of Employee.
- E. This agreement may be terminated, without cause, by either party with 14 calendar days of written notice to the other or as mutually agreed if less, or more, than 14 calendar days.

Acknowledgement of Service Agreement: By signature affixed below and by initial of each page of the Service Agreement and incorporated Appendix/Appendixes:

CLIENT:

EMPLOYEE:

Signature: Client

Signature: Employee

Signature Date: Client

Signature Date: Employee

APPENDIX A

Vendor Fiscal Intermediary (VFI) Option Program Rules

The VFI Option operates on rules established for use in Community Care programs through the Texas Department of Human Services. The 'Definitions' that apply in the option are included for the Attendant, employed by the Client, to acknowledge. The 'Definitions' establish the role of the Client, the employee/Attendant, and the VFI Agency as well as an overview of the VFI Option.

Title 40, Social Services & Assistance, Part I, Texas Dept. of Human Services
Chapter 41, Vendor Fiscal Intermediary Payments
TAC Section Number(s) ' 41.101, 41.103, and 41.105

' 41.101 Definitions. The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

(1) Consumer--An eligible recipient of a Community Care for the Aged And Disabled (CCAD) program or a Medicaid Waiver program that provides personal assistance services. In the Vendor Fiscal Intermediary (VFI) model, the consumer or his legal guardian is the employer of and retains control over the hiring, management, and termination of an individual providing personal assistance or respite.

(2) Personal assistant--In the VFI model, a person who is employed by the consumer to provide personal assistance through any CCAD program or Medicaid Waiver program.

(3) Vendor Fiscal Intermediary (VFI)--A CCAD contractor who participates in the VFI model and is responsible for employer administrative related functions.

(4) Vendor Fiscal Intermediary model--The payment option in which the consumer controls the recruitment, hiring, management, and firing of their personal assistants. A fiscal agent or VFI handles employer-related administrative functions that include payroll for the personal assistants and substitute (back-up) personal assistants and filing tax-related reports of personal assistants. The consumer is the employer of record.

The following are headings for the rules for the VFI Option. The text for these sections is not included in this attachment, but are available from the Client for review upon request.

' 41.103. Generic Contractor Responsibilities under the Vendor Fiscal Intermediary (VFI) Model.

' 41.105. Generic Consumer Responsibilities under the Vendor Fiscal Intermediary Model.

§41.114 Vendor Fiscal Intermediary Payment Option

CLIENT: _____ Initials, _____ Date

EMPLOYEE: _____ Initials, _____ Date

APPENDIX B

VFI OPTION PROGRAM - EMPLOYEE AND EMPLOYER ACKNOWLEDGEMENT

House Bill 456: Exemption from nursing licensure for certain services.

The **employer** (VFI Program Client) and the **employee** (the person delivering the service) **acknowledge** that, as the consumer who receives the service: he/she (A) has a functional disability and the service would have been performed by the consumer, or the parent or guardian for the consumer, except for that disability; and

When (i) the consumer is capable of training the person (employee) in the proper performance of the service, the consumer directs the person to deliver the service; or,

When (ii) the consumer is not capable of training the person in the proper performance of the service, the consumer's parent or guardian is capable of training the person in the proper performance of the service and directs the person to deliver the service, then the parent or guardian must be present when the service is performed or immediately accessible to the person who delivers the service. If the person will perform the service when the parent or guardian is not present, the parent or guardian must observe the person performing the service at least once to assure the parent or guardian that the person performing the service can competently perform that service.

The **employee** (Attendant/respite provider), **acknowledges** that as the person who delivers the service, he/she (A) has not been denied a license under Chapter 301 or 302, Occupations Code; and (B) has not been issued a license under Chapter 301, Occupations Code, that is revoked or suspended;

The **employer** and the **employee** each **acknowledge** that (h) the types of services that may be delivered under the Vendor Fiscal Intermediary (VFI) Option are:

- (1) bathing, including feminine hygiene;
- (2) grooming, including nail care, except for clients with medical conditions like diabetes;
- (3) feeding, including feeding through a permanently placed feeding tube;
- (4) routine skin care, including decubitus Stage 1;
- (5) transferring, ambulation, or positioning;
- (6) exercising and range of motion;
- (7) the administering of a bowel and bladder program, including suppositories, catheterization, enemas, manual evacuation, and digital stimulation; and
- (8) administering oral medications that are normally self-administered, including administration through a gastrostomy tube.

By signature below, both parties hereby acknowledge that the Employer/Client assumes all responsibility for attendant training under the VFI Option, including any tasks that would be considered skilled tasks under the Agency Option. **Both parties also acknowledge that skilled tasks may not be provided under Primary Home Care/Family Care (PHC/FC)**

Employer/VFI Client or Guardian	Date	Employee/Attendant	Date
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Note: Underlined text is from House Bill 456 adopted by the 77th Texas Legislature May 2001.

Service Agreement/Attachment B: To be acknowledged by each employee with the employer.

CLIENT: _____ Initials, _____ Date

EMPLOYEE: _____ Initials, _____ Date

VENDOR FISCAL INTERMEDIARY
OCCUPATIONAL EXPOSURE TO BLOODBORNE PATHOGENS/HEPATITIS B ACKNOWLEDGEMENT

**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) STANDARDS EFFECTIVE JUNE 4, 1992
REQUIRE THAT EMPLOYERS MAKE AVAILABLE THE HEPATITIS B VACCINE AND VACCINATION SERIES TO ALL
EMPLOYEES WHO HAVE OCCUPATIONAL EXPOSURE. THE COST TO PROVIDE VACCINATIONS IS AN
ADMINISTRATIVE EXPENSE TO THE EMPLOYER AND IS REIMBURSABLE THROUGH THE CONSUMER'S PROGRAM
BUDGET.**

UNIVERSAL PRECAUTIONS

1. Information has been provided and reviewed by the employer and the employee regarding the use of Universal Precautions. Universal Precautions will be used during the provision of services as applicable and appropriate.

HEPATITIS B VACCINATION

1. Information has been provided and reviewed by the employer and the employee regarding the risk of occupational exposure to bloodborne pathogens.
2. Employer hereby notifies employee of the availability of the Hepatitis B (Hep B) Vaccine at no cost to the employee. The vaccine is administered in a prescribed series of three injections over a six-month period: Dose 1 is followed 30 days later by Dose 2. Dose 3 is administered five months following Dose 2.
3. The employee may elect to receive or decline the Hepatitis B Vaccine.
4. The employee is responsible for requesting from the healthcare provider administering the vaccination additional information specific to the efficiency, safety, benefits, method of administration and potential side effects of the Hep B Vaccination.

INFORMED CHOICE RELATED TO HEPATITIS B VACCINATION

EMPLOYEE STATEMENT:

- ☐ **I AGREE** to receive the Hep B Vaccination and agree that:
- ☐ I will be reimbursed by my employer within 30 days of presenting a 'paid' receipt for each vaccination of the series received while employed by employer, or
- ☐ Employer and I have agreed to the following arrangement(s) related to covering the cost of the vaccination: _____

OR

- ☐ **I DECLINE** the Hep B Vaccination at this time and further understand and agree: Due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring Hepatitis B Virus (HBV) infection. I have been given the opportunity to be vaccinated with Hepatitis B vaccine, at no charge to myself. However, I decline the Hepatitis B Vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring Hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with Hepatitis B vaccine, I can receive the vaccination series at no charge to me.

**EMPLOYEE AND EMPLOYER ACKNOWLEDGE "UNIVERSAL PRECAUTIONS" AND HEPATITIS
B VACCINATION" INFORMATION PRESENTED IN THIS DOCUMENT.**

Employer - Signature/Date

Employee - Signature/Date